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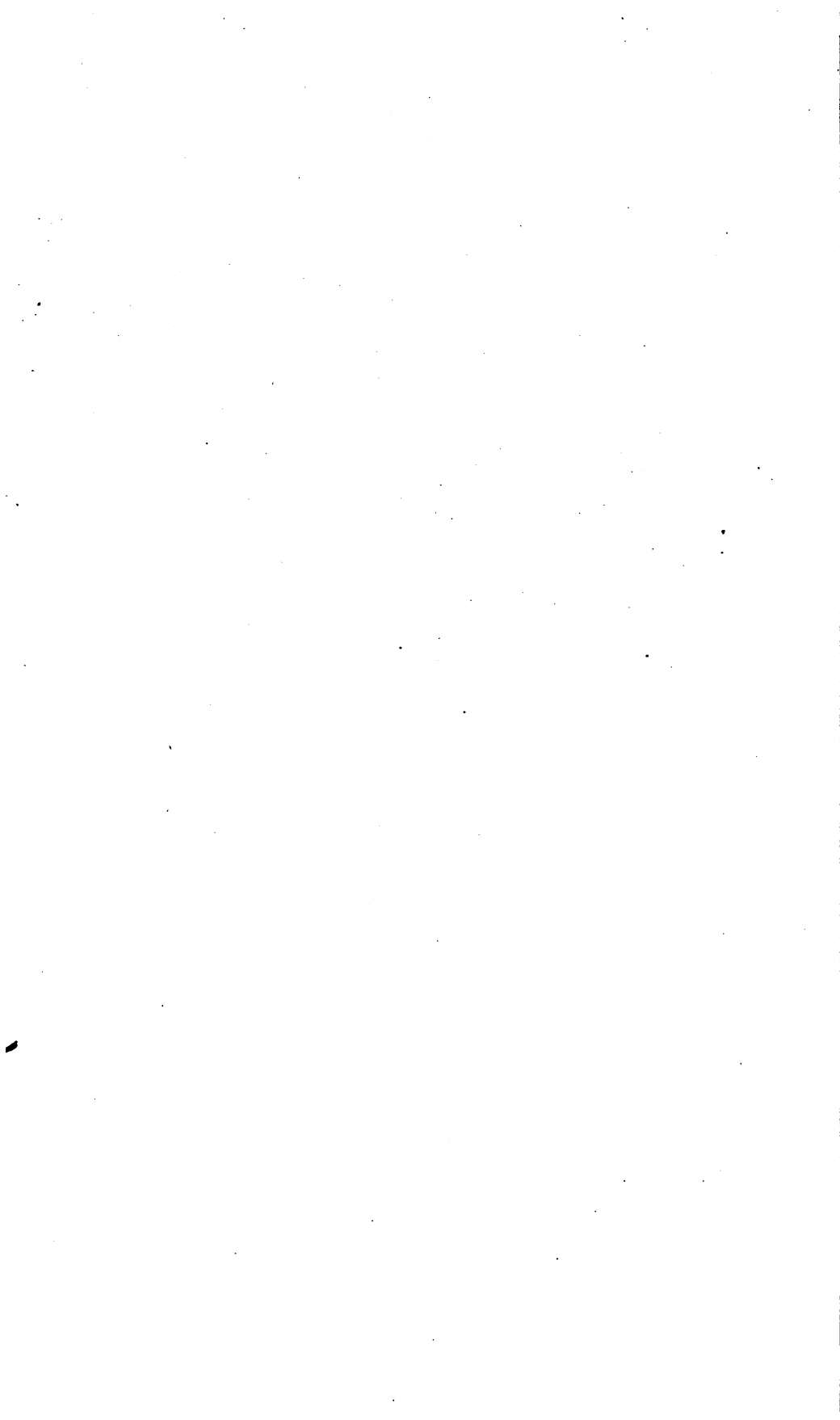
Cincinnati Southern Railway

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Cincinnati Southern Railway.



Ohio. Laws, statutes, etc. Railroad law

CINCINNATI SOUTHERN RAILWAY.

THE

FERGUSON RAILWAY ACT

VIEWS OF THE PRESS,

ADDRESS OF COMMITTEES, ACTION OF BOARD OF TRADE AND
CHAMBER OF COMMERCE, RECORD OF THE
CASE, AND OPINION OF

SUPERIOR COURT OF CINCINNATI

—AND—

Supreme Court of Ohio

THEREON.

CINCINNATI:

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CINCINNATI SOUTHERN RAILWAY.

MEMORIAL OF COMMITTEES

—OF—

Board of Trade, Chamber of Commerce AND CITY COUNCIL

ASKING

*General Assembly of Ohio to Pass Enabling Act for
Cincinnati to Build the Road.*

Submitted April 20, 1869.

The Joint Committee composed of committees appointed by the "City Council," the "Board of Trade," and the "Chamber of Commerce," of the City of Cincinnati, present to the Legislature of Ohio, the following Bill, enabling cities of the first-class to construct such works of internal improvement as may be deemed essential to their welfare. The Bill referred to is popularly known as the "Ferguson Railroad Bill," and has been very fully discussed by the people and press of the State. -

The Committee have taken the liberty of accompanying it with such remarks from the press of Cincinnati, as have appeared from time to time, which indicates a unanimity of sentiment relative to the necessity and importance of the construction of a Railroad, connecting Cincinnati directly with the Southern system of Railroads that has rarely, if ever, been manifested in reference to any other subject.

With these few preliminary remarks, the Committee submit the following Bill, as presenting the only available means at our command to accomplish a great public necessity, and respectfully ask your honorable body to grant their request:

THEO. COOK,
A. P. C. BONTE,
THOS. WRIGHTSON.
*Committee in behalf of
Board of Trade.*

J. L. KECK,
G. F. DAVIS,
J. F. WRIGHT,
S. J. HALE,
J. C. BUTLER.
*Committee in behalf of
Chamber of Commerce.*

A. T. GOSHORN,
W. H. HARRISON,
A. P. C. BONTE.
*Committee in behalf of
City Council.*

THE ACT

AUTHORIZING THE CONSTRUCTION OF THE ROAD.

AN ACT

Relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants.

PASSED MAY 4, 1869.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever in any city of the first class having a population exceeding one hundred and fifty thousand inhabitants, the City Council thereof shall by a resolution passed by a majority of the members elected thereto, declare it to be essential to the interests of such city that a line of railway, to be named in said resolution, should be provided between termini designated therein, one of which shall be such city, it shall be lawful for a board of Trustees, appointed as herein provided, and they are hereby authorized to borrow, as a fund for that purpose, not to exceed the sum of ten millions of dollars, and to issue bonds therefor in the name of said city, under the corporate seal thereof, bearing interest at a rate not to exceed seven and three-tenths per centum per annum, payable at such times and places, and in such

sums, as shall be deemed best by said board. Said bonds shall be signed by the president of said board, and attested by the city auditor, who shall keep a register of the same, and shall be secured by a mortgage on the line of railway, and its net income, and by the pledge of the faith of the city, and a tax, which it shall be the duty of the council thereof annually to levy, sufficient, with said net income, to pay the interest and provide a sinking fund for the final redemption of said bonds; provided that no money shall be borrowed on bonds issued until after the question of providing the line of railway specified in the resolution shall be submitted to a vote of the qualified electors of said city, at a specified election to be ordered by the city council thereof, of which not less than twenty days notice shall be given in the daily papers of the city; and further provided, that a majority of said electors, voting at such election, shall decide in favor of said line of railway. The returns of said election shall be made to the city clerk, and be by him laid before the city council, who shall declare the result by a resolution. The bonds issued under the authority of this section shall not be disposed of for less than their par value.

SEC. 2. If a majority of the votes cast at said election shall be in favor of providing the line of railway, as specified in the first section, it shall be the duty of the solicitor forthwith to file a petition in the Superior Court of said city, or if there be no Superior Court, then in the Court of Common Pleas of the county in which said city is situate, praying that the judges thereof will appoint five trustees, to be called the trustees of ——— railway, (the blank to be filled with the name given to the railway in the resolution), and it shall be the duty of said

judges to make the appointment, and to enter the same on the minutes of the court. They shall enter into bond to the city in such sum as the court may direct, with one or more sufficient sureties, to be approved by the court, conditioned for the faithful discharge of their duties. The bond so taken shall be deposited with the treasurer of the corporation for safe keeping.

SEC. 3. The said trustees and their successors shall be the trustees of the said fund, and shall have the control and disbursement of the same. They shall expend said fund in procuring the right to construct, and in constructing, a single or double track railway, with all the usual appendages, including a line of telegraph between the termini specified in the said resolution, and for the purposes aforesaid shall have power and capacity to make contracts, appoint, employ, and pay officers and agents, and to acquire, hold and possess all the necessary real and personal property and franchises, either in this State or in any other State into which said line of railway may extend. They shall also have power to receive donations of land, money, bonds, and other personal property, and to dispose of the same in aid of said fund.

SEC. 4. The said trustees shall form a board and shall choose one of their number president, who shall also be the acting trustee, with such power as the board may by resolution from time to time confer upon him. A majority of said trustees shall constitute a quorum, and shall hold regular meetings for the transaction of business at their office in the city under whose action they are appointed, but they may adjourn from time to time to meet at any time and place they may think proper. They shall keep a record of their proceedings, and they shall

cause to be kept a full and accurate account of their receipts and disbursements, and make a report of the same to the city auditor annually, and whenever requested by a resolution of the city council. No money shall be drawn from said fund but upon the order of said board, except their own compensation, which shall be paid out of the same upon the allowance of the court appointing them, and shall be proportioned according to their respective services.

SEC. 5. Said trustees shall have power to take such security from any officer, agent or contractor chosen, appointed or employed by them, as they shall deem advisable. They shall not become surety for any such officer, agent or contractor, or be interested directly or indirectly in any contract concerning said railway. They shall be responsible only for their own acts.

SEC. 6. Whenever the city solicitor of any city, under whose action a board of trustees has been appointed as herein provided, shall have reason to believe that any one of said trustees has failed in the faithful performance of his trust, it shall be his duty to apply to the court that appointed said trustee by petition, praying that such trustee be removed, and another appointed in his place; and when a vacancy shall occur in said board from any other cause, it shall be filled in like manner. If the said city solicitor shall fail to make application in either of the foregoing cases, after request of any holder of the bonds issued by said trustees, or by a tax payer of the corporation, such bondholder or taxpayer may file a petition in his own name on behalf of the holders of such bonds for like relief, in any court having jurisdiction, and if the court hearing the action shall adjudge in favor of

the plaintiff, he shall be allowed, as a part of his costs, a reasonable compensation to his attorney.

SEC. 7. Whenever in the construction of a line of railway, as herein provided, it shall be necessary to appropriate land for the foundation of abutments or piers of any bridge across any stream within or bordering upon this State, or for any other purpose, or to appropriate any rights or franchises, proceedings shall be commenced and conducted in accordance with the act entitled "an act to provide for the compensation to the owners of private property appropriated to the use of corporations," passed April 3, 1852, and the acts supplementary thereto, except that the oath and verdict of the jury and the judgment of the court shall be so varied as to suit the case.

SEC. 8. Whenever there shall be between the termini designated in any resolution passed under this act a railroad already partially constructed, or rights of way acquired therefor, which can be adopted as a part of the line provided for in said resolution, the trustees of said line may purchase the said railroad and right of way, and pay for the same out of the trust fund.

SEC. 9. The said trustees shall have power, as fast as portions of the line for which they are trustees are completed, to rent or lease the right to use and operate such portions upon such terms as they may deem best, but such rights shall cease and determine on the final completion of the whole line, when the right to use and operate the same shall be leased by them to such person or company as will conform to the terms and conditions which shall be fixed and provided by the council of the city by which the line of railroad is owned.

SEC. 10. The city council of any city passing a resolu.

tion as provided in the first section, may appropriate and pay to the said trustees, out of the general fund of said city, such sum as may be necessary for defraying the expenses of the election, and said sum shall be repaid out of said trust fund when raised.

SEC. 11. This act shall take effect on its passage.

F. W. THORNHILL,

Speaker of the House of Representatives.

J. C. LEE,

President of the Senate.

SUPPLEMENTARY ACT.

(Passed March 25, 1870.)

AN ACT

Supplementary to the act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants, passed May 4, A. D. 1869.

SEC 1. *Be it enacted by the General Assembly of the State of Ohio,* That the city council of any city of the first class, described in the act to which this is supplementary, may, after trustees have been appointed as provided in said original act, advance to said trustees out of any fund of said city such sum as may be necessary, not exceeding fifty thousand dollars, for carrying the object for which they are appointed into effect, and said sum shall be repaid out of the trust fund provided for in said original act when raised.

SEC. 2. This act shall take effect on its passage.

A. J. CUNNINGHAM,

Speaker of the House of Representatives.

J. C. LEE,

President of the Senate.

VIEWS OF THE PRESS

Upon the Enterprise.

CINCINNATI INTERESTS—SOUTHERN RAILROAD HOW THE CITY CAN MAKE IT.

[From the Railroad Record, Nov. 26, 1863.]

No one will dispute the fact that we, with other members of the city press, have "said enough" about the importance of constructing a railroad through the State of Kentucky to connect us with the whole Southern system of railroads to have at least accomplished something; but we have to confess, thus far, all efforts have been a "most signal failure." There seems to be a sort of fatuity that has hitherto "blocked up the wheels" of private enterprise. Although we confess to a great lack of faith in corporate authorities to manage, *economically*, the construction of any work, however small, yet rather than not have the road through Kentucky made, or even have its construction delayed for two or three years longer, we would say, adopt, by all means, the plan suggested by E. A. Ferguson, Esq., and push forward the work to completion. We still contend that its construction by private enterprise would be preferable, if it can be accomplished; and we believe it can. This, however, is a matter of faith merely; we now not only want faith, but works, and if one plan won't accomplish results, the other will. Hence, we are in favor of having the law passed by the Legislature, and if private enterprise shall not find a practical plan for its construction in the next three months, or before the season of active operations

shall again come round, why then let the municipality "cut its swath."

The question of the ability of the city, under the constitution, to do this work is not a new one; while the disability to participate in any enterprise as partner, has been admitted and regretted; yet we have on various occasions indicated that by proper legislative action, the city could, *alone*, construct any work of internal improvement. We asserted this power in one of our issues of last September, and on several other previous occasions. The citizens, however, owe many thanks to Mr. Ferguson for giving shape to the enabling act, and bringing it so forcibly before them. It can not fail to meet with universal approval, and although there may be some points in the bill not perfect, yet in the cursory reading that we have given it, we have failed to perceive them. There is one other point to which we will draw attention. Legislative enactments and municipal enterprise, as a general rule, are "slow" in their operation; although we confess it would be difficult to conceive of any thing "slower" than the *past history* of the "direct route" to the South, as conducted under individual effort. Yet there were *reasons* of delay, that have been explained an hundred times—these are now removed, and real, active efforts are now being made, which, we trust, will result in success. The time now is when Cincinnati needs the road, and can not afford to longer delay; this we regard as more important than *how* or by *whom* it is to be built.

CINCINNATI AND THE SOUTHERN RAILROAD.

[From the Cincinnati Enquirer, Nov. 26, 1868.]

Below we print a bill drawn by an eminent lawyer of this city, to be introduced at an early day in the present session of our State Legislature, designed to secure the completion of the long-proposed railroad connection between this city and the South. Of the importance of this measure it is unnecessary for us to speak. We have often discussed it, and always to commend it. The bill, as drawn, meets the approval of our people, irrespective of party lines or political complexion. It is approved as the true

and only solution of a great problem, and the achievement of a great purpose. Cincinnati needs this Southern Railroad. Her people have felt its necessity for more than twenty years, and have more than twenty times essayed to build it. They now ask the Legislature to pass the subjoined bill as the surest and speediest way of doing the work. We trust they will not be disappointed; and we can assure our friends at Columbus that in giving their assent to it they will do much to increase the wealth and prosperity of Cincinnati and the State of Ohio.

THE SOUTHERN RAILROAD.

[From the Evening Chronicle, Nov. 26, 1838.]

The importance of a Southern railroad, which the *Chronicle* has often urged upon our people, is at last beginning to be realized. Its friends, having almost despaired of getting individuals or our railroad corporations to take hold of and construct it, are now making efforts to enable the city to take the matter in hand. We hope they will succeed. It will be an astonishment to some of our slow-going people to see the city of Cincinnati undertaking the job of building an extensive line of railroad. Were there any other practicable way of accomplishing our purpose, we should prefer that it be adopted; but there seems to be none. The framers of our Constitution, impressed with the idea that wisdom and prudence would die with them, made an effort to legislate for all time to come, and to prohibit future interference with their wondrous works. Yet, as a body, they stood very little higher than any Legislature that has convened under the Constitution they framed. A part of their wise work was to provide that no city should ever loan its credit or subscribe to the stock of any corporation whatever, or to raise money in aid thereof. By reason of this provision of the Constitution, the progress of Cincinnati has been hindered, and its rapid growth, both in population and wealth, has been prevented. While, however, we may not subscribe stock, loan our credit or raise money for the benefit of any corporation, there is nothing to prevent

the city in its corporate capacity from prosecuting the work usually done by corporations—building water works, gas works, highways or railways, either in or out of the corporate limits, *provided, always*, that the Legislature grant the authority. This, at least, is the opinion of some of our best lawyers.

Acting on this opinion, Alexander Ferguson, Esq., at the instance of friends of the Southern enterprise, has drawn up a bill to be presented to the present Legislature, with the hope that they will take favorable action on it. With very slight changes we hope the bill will become a law.

The bill is very carefully drawn, and should it become a law, we shall expect the result to be very advantageous to our city, and the wise legislator is well aware that the interests of Cincinnati are identical with the interests of the State.

HOW CINCINNATI MAY BUILD THE SOUTHERN RAILROAD.

[From the Cincinnati Gazette, November 26, 1868.]

Cincinnati needs a railroad directly South, to connect with the extensive system of railroads in the Gulf States, in order to secure her future progress. This is the great want of our people. That accomplished, there would be general confidence that the growth of our city would continue to be commensurate to the growth of the whole country. Without that, this confidence will be lacking. And the lack of confidence in the future is in itself a blight upon its increase. The matter has been agitated for a quarter of a century, and at this time, agitation is the only result. The project seems as far from accomplishment as ever. There are strong elements to co-operate and aid, but there is no more promise now of the capital foundation and organization that can grasp these auxiliaries and combine them in the object than there was when the project was first started.

It is evident that the citizens of Cincinnati must build the road, or it will not be built. But when subscriptions of private capital are talked of, it is found that the property holders, who would be most directly benefited by the increased prosperity of the city,

are inert, and inclined to leave the support of the undertaking to business capital. This creates dissatisfaction. This situation has caused a general regret that the Constitution forbids the city from aiding the construction of the road by its subscription to the stock, or by the loan of its credit; for in such a way the burdens of the aid given by the city would be equitably distributed according to the benefits received. And whatever objections persons may have in the abstract to the undertaking of works of internal improvement by government, State or municipal, are apt to disappear in the presence of an obvious necessity or great advantage to the general welfare.

The general expression of regret that the city is thus restricted in a matter which is regarded as essential to her future progress, and of a desire that some way may be provided by which she can furnish the requisite aid, has led to a careful examination of the provisions of the Constitution, to see how far the city is limited, and if the limitation does disable her from making this undertaking. The only provision of the Constitution that contains any prohibition affecting this matter is the following:

"The General Assembly shall never authorize any county, city, town or town-ship, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation or association, whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association."

The entire compass of this limitation is, that the city shall not become a partner in any joint stock company, nor loan its credit to any such association. It does not forbid the grant of authority to the city to undertake works of public improvement on its own account, with its own money, and to raise the means by loan or taxes for that object. Thus the city might not take stock in a water-works, or gas, or fire-engine company, nor lend its money or credit to them, but it can do these works in its own name. Nor is it limited to the city boundaries in these works. If it had to go beyond them, or beyond the State, to find a source of water, it could do so. The Legislature can not authorize the city to take stock in a railroad company, nor to lend its money or credit to such a company, but there is nothing in the

Constitution which prohibits the grant of power to the city to build the railroad, and to borrow money for that purpose, and to levy a tax to sustain the credit which it thus extends.

The only question, therefore, that remains is, whether this road, directly south from Cincinnati, is so essential to the preservation of the prosperity of Cincinnati, and to the continuance of her pace of growth, as to demand that the city shall take the work upon her shoulders, and carry it through by her own capital, and by a credit founded on her vast property, in addition to the work itself. She can raise the money on such security on lower terms than any railroad company. She can have the grant made with conditions that shall provide for the selection of trustees by our highest court to manage the undertaking. She can include and combine all the aid that has been tendered along the line of the road. Her ample resources of credit will enable her to complete the undertaking without undergoing the usual sacrifice in financiering. When completed, she can either sell the road, or lease it, subject to conditions that will preserve her interest. As it would be politic that she should always have a certain control of transportation rates, in order to protect her own trade, it is probable that the leasing system will be safest.

But the main question is to build the road. That being done, the city will be master of the situation. We present in another part of this paper the draft of a bill to be presented to the General Assembly to grant the necessary authority to the city to build the Southern Railroad. It is the work of Alexander Ferguson, and has been prepared with much care, and after a careful and exhaustive search of legal authorities, and is believed to be legally impregnable. The bill is drawn in the general style which is made necessary by the Constitution; but as there is no other city in Ohio having 150,000 inhabitants, and is not likely to be soon, the authority is available only to Cincinnati. The first section contains a grant of power to build such a railroad, to create a board of trustees to manage the construction, who may borrow the money, and pledge the work and faith of the city. And it furthermore makes it the duty of the Council to levy a tax to provide for the interest, and a sinking fund for the princi-

pal. With these provisions the securities will be better than those of any National or State, or than any simple railroad bond, and these bonds will command a price, or will be negotiable at a lower rate of interest, accordingly.

The amount of capital authorized is intended to be sufficient for the undertaking, while of course, the amount raised will be no more than is required. The second section provides for the appointment of trustees for said railroad by the Superior Court. The third, fourth and fifth sections contain the general grants of authority to these trustees to do the things necessary to construct this work. The sixth section provides a summary way of impeaching a trustee for unfaithfulness. The seventh section gives the power to appropriate land necessary to piers for bridges. Section eight gives authority, which may be convenient, to take in any road already built on any part of the line, if the trustees shall deem it desirable to acquire the title to such road.

The ninth section provides power to lease the road as it is completed. Section ten authorizes the City Council to aid the trustees. And the eleventh and last section provides that the act shall take effect upon its passage.

Here is a plan by which the city may build the road, if the citizens shall demand it with unanimity. It is a large undertaking, but it will be an investment which will be represented by a railroad property worth the money, and which should pay a fair interest on the capital, and eventually liquidate the debt. In reply to the ready, and the only great objection, namely, that such an undertaking by municipal corporations is apt to be badly managed, it may be said that the citizens themselves can always exercise an influence on the management, and that if they properly look to their own interests, this undertaking will not be badly managed. The plan is before the public. There is no legal impediment. The legislative authority can be had, if our citizens ask it. It depends on them whether this railroad shall be built or not.

CAN CINCINNATI BUILD A RAILROAD.

[From the Cincinnati Commercial, Nov. 23, 1838.]

Since the new Constitution of Ohio was placed in the hands of its friends, the impression has been prevalent that the city of Cincinnati could not employ her credit in constructing railroads. The general opinion that this disability existed, and the acquiescence in it, has, perhaps, kept the city debt within comparatively reasonable limits; but it is questionable whether it has not prevented the substantial encouragement of enterprises that, consummated, would have made the additional indebtedness an excellent investment.

The conceded inability of the city to do anything for itself has been especially felt in regard to the proposed Southern railroad. A few years ago, some of our business men started a subscription to aid in the work of connecting Cincinnati and Chattanooga directly by rail. Several of our old merchants and capitalists subscribed largely, and labored with assiduity to make this movement a success. They failed, because many who would have profited largely by success, refused to contribute, expecting to take advantage of the liberality of their neighbors. Out of these circumstances, and their great notoriety, grew a public opinion that we believe to be intelligent and resolute, to the effect that the thing to do was to employ the credit of the city *and make every tax-payer a stockholder in the Southern railroad*. Much discussion has taken place as to the most speedy and effective method of executing the public will.

If there were no constitutional difficulties in the way, the credit of the city would certainly soon be loaned to a Southern Railroad Company. It has occurred to one of the most capable members of the legal profession in our city, and we will take the liberty of naming Mr. E. A. Ferguson, that there is no constitutional prohibition of cities of the first-class in the State of Ohio, (which is the legislative formula for the city of Cincinnati,) building and owning a railroad. And Mr. Ferguson has carefully prepared a bill to authorize the city of Cincinnati to construct and possess and operate a railroad. This document we print in another column, and need hardly to ask for it the most consider-

ate attention of the tax-payers and business men of this community, for its very great importance and general interest will be universally recognized. Whether Mr. Ferguson has perfectly succeeded in the object which we have endeavored to make distinct, is a question for lawyers and capitalists, legislators and trustees of the city to determine, after due debate. We may observe that there is a public consciousness that something must be done by Cincinnati for Cincinnati; and if there is a better plan or a better bill than Mr. Ferguson's, there is a demand for it. Objections may be multiplied, but before pronouncing judgment against this new "Ferguson bill," we would desire to see in the place that it is prepared to fill a better thing. Amendments may be suggested. Many of possible value will occur to the careful reader. Perhaps it would be worth while to submit the proposition to a popular vote in the city, or to insist upon a two-thirds majority in Council, but these are details and do not touch the essential. One thing is certain, that not only must something be done by Cincinnati for herself, but that the thing done must be something of wider scope and more vital significance than mere local improvements. We may exhaust ourselves in placing parks on every hill, and cutting a superb avenue for each one of our city Councilmen, that the names of the members of our municipal Congress may be commended to posterity, and yet we will not bring business to the city. It is not in the decoration of the city that public expenditure is demanded, but in providing material to make more city. Venice did not perish for lack of palaces. She ceased to command the trade of the Indies. Rome was not saved by her water-works, and London has not grown great because she has parks. The trade that is due Cincinnati has been permitted to drift away from her. She has not, as she should have, the trade of the South or the travel of the North. The continental current of travel streams along the lake shore and through the center of the State. The advantage of her commanding location on the Ohio, and her central position in the Union, are in part and for a time lost to her. That which she needs is not above all things, to put on just now the fine raiment of parks and avenues, and to adorn herself and dot the surrounding country with magnificent piles that will perpetually advertise the superb conceptions of gifted architects. We do

not absolutely need feudal castles, with cloud-capped towers for the sick, and gorgeous temples for the poor, and work-houses modeled after the Tuileries; but we do require more vital blood in our arteries, a surer grasp upon the broad and fertile and populous region that is naturally our territory—that was ours before we were exceeded in energy and distanced in enterprise. The ease of our early opulence mis-taught us. It is time that we should emerge from the dimness of our mediæval epoch, and put off the philosophy of indifference that has been cultivated to our cost. We must have parks and avenues and great public edifices, and bigger things generally, to make the city more attractive; but *first* we need to secure for ourselves the imperial dominion that is our rightful heritage, and get the food whereby we are to grow.

CINCINNATI RAILROAD CONNECTIONS.

[From the Cincinnati Daily Times of Nov. 28, 1878.]

We have constantly advocated the early construction of a line of railway to connect the system of Northern roads concentrating in Cincinnati with the Southern roads, at whatever point they more especially concentrate. We have expressed our opinion this point is to be found at Nashville, but *wherever* it may be, and *however* the road may be constructed with the greatest rapidity—*there* is the point, and *that* the means we advocate. We continued to impress this important subject on the minds of our readers by repeated editorials and by the publication of numerous contributions from correspondents, until it seemed we might be considered monomaniac, and our readers might require a change of subject, like the man who did not desire always to be fed on salmon or partridge; more especially as we continued to advocate this subject at a time every one seemed to have lost all realization of our condition of comparative isolation from the future Southern trade, or to have made up their minds that Louisville would do what our own citizens did not seem to have energy enough to achieve.

We are much pleased to find that the seed we hopefully planted

appears at last to have germinated, for now and again we meet with some one who looks forward with anxiety to the time we may have a direct Southern railway. The proposed bill, of which we have published a synopsis, enabling this city to construct a Southern road, seems to afford a means of relief, and we do not consider it advisable, in this connection to discuss the merits of the details, but to impress on our readers the absolute necessity that this course should be adopted, since it is the only one by which an *immediate* advance can be made. And as we are deprived of authority to lend our credit to any corporation that might undertake the construction of a Southern railway; and as our real estate owners, merchants and manufacturers will not come forward with individual subscriptions in a sufficient amount—then, we say, let the city herself construct this road which is essential to her existence, and without which she must sink into decay.

We are aware many persons think city gas works, water works, and all other public improvements can be more economically managed by individuals or by stock companies than by municipal or State authority, and we see no reason to doubt this is the case, but when it comes to be a matter of life or death, where our future prosperity or decay are in such scales, then extreme cases need extreme remedies; and as a skillful physician might prescribe croton oil to a patient, who without its use seemed to be on the very point of death, so we may let our city authorities build and operate a Southern railway for the benefit of our citizens.

There has been much money spent in our city lately in sewerage, hospitals, Nicolson pavements, city parks, etc., etc.; and although, if our growth continues uninterrupted, and prosperity attends our efforts, there has not been sufficient expenditure in these respects, yet we would prefer every dollar had been invested in building a Southern railway, and the means thereby provided of increasing the necessity of these improvements, and of paying for their construction.

With the greatest exertions and most rapid work it is not probable a direct connection with the Southern railroads, free from Louisville influences, can be obtained sooner than two years—and this is equal to an age in the race we have to run.

See the incalculable benefits resulting to Louisville because she has *at this moment* a direct connection with every point of importance in the South, and has under progress a railroad bridge over the Ohio River. Already powerful corporations are being established and consolidations being effected from the East and North, looking to Louisville as the point to tap the Southern trade. See what a harvest must be reaped by her citizens when Louisville becomes the distributing point for Northern manufactures to Southern consumers—and see what a period of active trade we have lost by not availing ourselves of the advantages that seemed forced upon us, but which we would not open our arms and grasp.

Let us look at the period of dull business and commercial losses that must be our lot unless we arise from our lethargy and do with our might what should have been done years ago.

We have no idea that we can, by any possibility, enjoy the same prosperity for the next few years that we might, had we, at this moment, in full operation, a direct line of Southern road; but we may prevent this loss being permanent, and provide for the maintenance of that position we are entitled to among the cities of the West, if we go forward vigorously in the scheme now presented to us, and looking neither to the right hand nor to the left, give our undivided assistance to those who may be now exerting themselves for our prosperity.

We hope every one, of every class, will unite, that there may be no dissatisfaction because any one pet scheme has not been adopted, but that all individual interests will be surrendered, and all will push forward and promote the present cause. Let every man vote for the city to build a grand main trunk Southern Railroad as quickly as possible.

THE SOUTHERN RAILROAD—THE FERGUSON BILL.

[From the Cincinnati Enquirer, April 9, 1869.]

The prospect of any amendment to the State Constitution of Ohio, which will give the city of Cincinnati any chance of afford-

ing aid in its corporate capacity to the Knoxville Southern Railroad appears faint indeed. Our hopes of relief must come from another quarter. The question arises, does the constitution really interpose an insurmountable obstacle to that end. For the sake of avoiding all doubt on the subject, we have chosen thus far to recognize the application of the question, but it is not really found in the letter of the fundamental law. The following is the section of the constitution which it has been proposed to amend. It is the only section which has the least bearing or effect upon that which we propose to change. It is as follows:

“The General Assembly shall never authorize any county, city, town or township, by vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation or association whatever, or to raise money for or loan its credit to or in aid of any such company, corporation or association.”

The real effect of the above is plainly seen in its very terms. The constitution prohibits a city, town or township from lending its aid and becoming a partner of any stock company or association. But it does not prohibit the city or township from building water-works, gas-works or railroads at its own single expense, provided it has the consent of the Legislature. This construction of the constitution has been acted upon ever since it was adopted. A large moiety of judicial decisions could be cited, if necessary, to sustain it. We trust our Democratic friends in the Legislature will take this view of the matter. There are many reasons why they should do so. It is justified, in the first place, by a strict construction of the constitution, which is always a primary element of the Democratic faith. Secondly, it is found in the necessities and condition of the people in this part of the State, which rightly regard the completion of the railroad as an indispensable element of prosperity in the future, which element we can not have without corporate aid. Great party as well as public interests require it.

A SOUTHERN RAILROAD.

[From the Cincinnati Enquirer of April 14, 1869.]

The construction of the Southern Railroad is indispensable to the prosperity of Cincinnati. With the finishing of say one hundred and twenty miles from Danville, Kentucky, to Knoxville, Tennessee, supplying the gap existing between the West and the South, we should have several thousand miles of railroad connecting with this city that are now far removed from it. The distance is not greater than from Columbus to Cincinnati. That traversed by the iron horse, and Mobile, Charleston, Richmond, Raleigh, Savannah and New Orleans are all placed within easy railroad access of this city. We then drain the mineral wealth of East Tennessee, North Georgia, Alabama and North Carolina. In addition we share in the immense trade of the richest of the Southern States, in their agricultural products.

But it is useless to argue this question. It is already sufficiently appreciated. Everybody in Cincinnati is for the Southern Railroad. Every body thinks that it ought to have been built many years since. It is unnecessary to talk, however, of its completion by the voluntary subscriptions of rich citizens, as that has been tried for many years, and has always humiliatingly failed.

Small as is the amount requisite to its completion, it appears far larger than our citizens are willing to launch out. They are either too much engrossed in the almighty dollar for the present, or think too little of the advantages for the future. Neither is it wise or judicious to look for its building from the great trunk railroad lines of the East. Those lines are leasing roads, for their ambitious purposes, that are already constructed, but they are not building new lines, which, in fact, require means beyond their resources.

The only way the road can be certainly constructed is for Hercules to put his own shoulders to the wheel—for the city to lend its credit to its construction. It has already lent its credit for purposes of far inferior importance.

Our State Constitution of 1851, which seems apparently designed to check the growth of the city of Cincinnati, appears to forbid this, but it is only in seeming. The city has as much

right, under it, to build the road, provided it does it all itself, as it has to own water works, gas works, or a park, or any other object of internal improvement.

Time is important in the construction of this most essential artery of trade. Every day that it is left unfinished is a great injury to our citizens. We have already talked about it for thirty-seven years. In that period the city of Chicago has been built from a hamlet, containing but a few houses, to a city which rivals, if it does not exceed, that of Cincinnati in the extent of its population. In connection with Chicago thousands of miles of railroads have been built leading to newly-created States and Territories. Our sluggishness has been well and appropriately punished in the loss of trade, while Chicago has been rewarded by its ability and enterprise.

The time has come when this Southern Railroad—to which our fathers attached so much importance, which they foolishly neglected to build—is to us indispensable. It is the first step requisite to take Cincinnati out of her shell, and send her bounding on a new course of progress and improvement. The year that is before us ought to witness heavy work upon the road. They want a law like the Ferguson Bill, so-called, which will enable them to be at work on this road during the coming summer and fall, pressing it on toward a completion. There ought to be no opposition in the Legislature to it. It is a local matter, which in no event can affect any others than those here who are pecuniarily liable for it. If we of Cincinnati can afford, or think we can afford, to construct a railroad for the benefit of our trade—we agreeing to pay for it out of our own funds exclusively—no other section or people should object to it. They can not do it without violating the Democratic principle of local self-government, and being unjust to their brethren in Hamilton County.

THE SOUTHERN RAILROAD.

[From the Cincinnati Gazette of April 20, 1869]

The Committee of the Chamber of Commerce on the Southern Railroad, in consultation with the Committee appointed by the City Council, and the Hamilton County delegation in the General Assembly, have come to the conclusion to recommend and support the plan advised by Mr. Ferguson, and embodied by him in a bill for the Legislature, by which the city shall build the road, being duly authorized to borrow money and to do all that is necessary to construct and operate a railroad. With this backing the plan will be laid before the General Assembly and its immediate passage urged.

Last fall we laid this plan before our readers. A few words will describe its general features. The theory of lawful authority is founded upon the fact that although the Constitution prevents the General Assembly from granting power to the city to become a partner in, or to raise money in aid of, any railroad company, it does not prevent that body from authorizing the city to raise money to build a railroad under its own sole ownership. It assumes that such authority is of the same nature as that granted to the city to build water works, in which the work is not limited by the State boundaries, but may be carried wherever it were found necessary to go for a water course.

The bill provides for a Board of Trustees, to be appointed by our Courts, to manage the finances and construction of the work. The plan supposes that citizens, who will command the confidence of the community, shall be appointed Trustees of this work. It contemplates that they shall procure all the aid by subscriptions along the line of the road that have been offered, or that may now be found available. It provides that these trustees shall have the power to do all that the officers of any railroad company may do in laying out and constructing a railroad, and that the bonds which they issue shall pledge the faith of the city as well as the property of the road.

If any company can afford to build this road, the city of Cincinnati can. If it requires the sinking of any capital for the public benefit, this city and the inhabitants on the route are the parties that justly ought to sink it, for they will have its benefits.

If, as is generally believed, it will be a profitable road, paying fair dividends on its actual cost, the city can easily dispose of the whole property, if that shall be thought the wisest policy, when the benefits shall have been secured. And with the credit of the road placed at the start on so broad a foundation, it will escape that ruinous sacrifice in financiering which, upon the average, has doubled the actual cost of railroads.

The plan contemplates bringing the road across the river into a depot in this city, where it shall have connections with all the roads running to this place. After due deliberation, the conclusion has been reached that all other modes of raising sufficient means in this city to cause the building of the road are impracticable, and that this is the only way in which it will be done. If our citizens have the faith which they profess in this line, that it is the best route for a railroad now unoccupied, and that it would be a paying property, besides adding vastly to the substantial position of this city, the magnitude of the work need not at all alarm them. If private capital might safely venture in it, the city of Cincinnati need not be frightened at the amount of the investment.

[From the Cincinnati Commercial of April 26th, 1869.]

The Legislature will confer a positive fortune upon Cincinnati if it will act upon the Ferguson Railroad Bill before proceeding to consider the bill introduced in the House by Mr. Kennett to authorize the issue of bonds to the amount of one million dollars for Deer Creek improvement. Our great need is a railroad connecting the city with the Southern system of railroads. The conviction is deepening that such a road is essential to our prosperity, and must be had before we can expect that development which is to enable Cincinnati to hold the eminent rank she has had among the great cities of the West. Perhaps we shall feel rich enough, after entering upon this essential enterprise, to invest a million in Deer Creek; but the best assurance we can have of the ability to do it will be in the increase of industry and commerce which will follow the opening of a road that will put us in direct communication with a territory rich in raw products and anxious to

exchange them for those of the foundery and the shop. Let us have the Railroad Bill first.

THE BALL A-ROLLING ON.

[From the Cincinnati Times, April 20th, 1869.]

The people are gratified with the energetic measures adopted by the commercial bodies of this city for securing the privilege of building a Southern railway. The committee appointed to take the matter in hand and visit Columbus for the edification of the Legislature on this subject, has adopted Ferguson's bill as the basis of action. They thus have some foundation to stand upon, and at Columbus will not be compelled to beat the bush for uncertain game. That bill provides that cities of the first class, containing 150,000 people, may loan their credit to build a railway under authority of the Common Council; for the appointment by the Superior Court, or Court of Common Pleas, of five trustees to provide for the expenditure of the fund in constructing a road and telegraph along its route; for letting the contract and taking ample security; for the removal of either of the trustees on petition of the City Solicitor; for the purchase of any road along the route already built, and making it a portion of the line: and for leasing portions of the road that may be built, and finally the whole line, &c., &c.

This seems, as we have heretofore said, to suit the case, and the committee has, doubtless, been discreet in adopting it as the basis of their argument to the Legislature.

Of course, there is no reason for any delay or hesitation on the part of that body. It is our own business, the interests of the State will in no manner be compromised by giving Cincinnati what she asks.

SOUTHERN RAILROAD—THE FERGUSON BILL.

[From the Railroad Record, April 22, 1869.]

We had hoped that long ere this we should have been able to report the Southern Railroad "in process of construction;" but as "hope fails, the heart is made sick!" The effort to secure the construction of the road by the aid of individual donations, is, on the part of those who have been managing it, confessedly a "failure." What those efforts have been, or whether well directed or properly made, we do not propose now to discuss. Three months ago we had reason to suppose that private enterprise *would* succeed, and that combinations then forming would secure its construction. Although we desire it understood that we ever have been, and are still in favor of private enterprise, "on general principles," there is such a studied effort to become perfect in "how not to do it," because all beneficiaries can not be made to contribute alike—the millionaire and the hod-carrier — it is evident, arguing from the past, that it never will be done in that way, or will at least require the life-time of two or three more generations.

THE ONE MILLION BONUS PLAN

Of Judge Dickson, has been also fully canvassed, as to its practicability, and found to come short of accomplishing the desired result. The Constitutionality of this "Plan" rests on the fact that the money is to be given to an *individual*, instead of a "joint stock company, corporation or association." This, at best, is but "whipping the devil around the stump," and is clearly open to the palpable objection that but few individuals have the financial ability, unless they are the mere tool of a "joint stock company, corporation or association," to carry it to completion, and to give the city what is really wanted, not only the road made, but security that it will be managed in the interest of Cincinnati, instead of some gigantic monopoly, whose whole interest is in carrying all trade and traffic beyond us to other markets.

CAN THE CITY AFFORD TO BUILD THE ROAD?

Of the constitutional right of the city to build the road, there can be no more question than of its right to build sewers, pave streets, or construct avenues. The only question remaining is that of policy—profit and loss. To decide this question dispassionately, it is necessary first to inquire what is the risk to be run—next will the advantages to be attained warrant it. The Ferguson bill provides for the appointment of Trustees by the Superior Court, who are clearly to hold their positions “during good behavior,” or a faithful administration of the trust reposed in them. They would be the Trustees alike of the bondholders and the city; and, hence, would not, and should not be subject to change or removal through political influence. The trust can not, therefore, be construed into a “political machine,” and whatever political influence the trust might exert would only be “during construction,” and then only in a district beyond the jurisdiction of the appointing power.

Another question of risk is that of unfriendly legislation by other States, and the consequent injury to the property and deterioration of the value of the securities. This is not as serious a difficulty as at first appears. First, the work can, and will, only be constructed under proper charters from those States, (contracts, with vested rights) and as the parties in interest belong to different States, questions that may arise will have all to be adjudicated in the United States Courts, beyond the influence of State prejudice or the corruption of local influences.

Next is the amount at risk. This depends on the length of road to be constructed. At what point it is determined to begin and where to end. The whole sum of cost is not the sum at risk; because the road must be worth something when done. It should be further taken into consideration that the road can be more cheaply made on the Ferguson plan than on any other, because the securities can be made as “good as gold,” and the whole work done on the “cash principle.” Thus saving in commissions and discounts almost as much as the entire amount proposed to be given to “an individual” as a *bonus*. In no scheme, on the *bonus* plan of construction, is it proposed that the *bonus* should be more than *one-eighth* the entire cost. Hence, we argue, as “an individual”

can not afford to take perilous risks, that the sum at risk is not more than "one-eighth the cost of construction;" or, in other words, that the road when made will be fully worth seven-eighths of its cost; on this it will pay. A very small addition to the tax duplicate would provide a sufficient fund to meet all deficiencies that might arise out of the "risk on one eighth the cost," less the savings on commissions and discounts; even that risk and tax would soon be extinguished after the completion of the road.

CAN WE AFFORD IT?

We believe there is but one sentiment in the whole community on this point. That an increase of business would be the result, everybody believes; with increase of business comes enlarged profits, and a more rapid growth of resources, wealth and ability to bear taxation. It matters not how vast is our material wealth, if it is *non-productive*. It would ruin Rothschild to own our public domain, if he had to pay taxes on its vast and imaginary worth; but let it be cut up into farms, and tenanted with all the appliances of civilization and a dense population, and the case would be different. It is just so with Cincinnati. Give us business, and no one will grumble. Curtail our trade, and all live men will be constrained to follow the illustrious example of the "rats who left the sinking ship."

THE SOUTHERN RAILROAD A FIXED FACT.

[From the Cincinnati Enquirer, Jan. 28, 1872.]

The Cincinnati Southern Railroad bill has passed the Kentucky Legislature. Charters for it have now been granted by the States of Ohio, Kentucky and Tennessee, which are interested in it. It has been a long struggle, the original bill having been adopted by the Legislature of Ohio in the early part of 1869. The opposition to it—not so much against the object to be accomplished as the manner in which it was sought to be effected—has been bitter and intense. Besides the fight that was made on the bill in the Legislatures, its legality and constitutionality were questioned. That has been judicially settled by the decisions affirming it, both

in the Superior Court of Cincinnati and in the Supreme Court of Ohio. Thus, at last, after a contest of three years, the Trustees under the bill have a plain and clear field before them. They can now proceed with the work, unhampered by any legal difficulty, and with the full consent of the States, backed up by the wealth and resources of this city. We presume that opposition will henceforth cease; that the construction of the road in the form provided under what is known as the Ten-million Bill may be regarded as a settled and irreversible fact. *It is useless now to talk of other schemes, which are problematical in their character, which may or may not, if we had wished, been adopted.* The great necessity of Cincinnati is a Southern railroad—nothing can be more important to its future interests. We have suffered greatly for its non-completion in years that are past and gone, and now should put our shoulders to the wheel, when it is certain that under the law the way for its building is open and speedy, and with means that can not fail. With this road in successful operation, Cincinnati will start upon a new career of prosperity. Let it be now put through at the earliest period.

THE BILL OF FALLACIES.

[From the Cincinnati Gazette, Feb. 10, 1872.]

When a member of the Legislature introduces a bill on an important public affair of his constituents, he ought to be able to show that he represents them. What evidence has Mr. Fallis to show that in his bill to create a railroad syndicate, with a fund of three millions to give away, and to repeal the Southern Railroad charter, he represents any Cincinnati constituency or interest, or any public opinion? What has happened to disfranchise the citizens of Cincinnati, and to authorize Mr. Fallis to assume the office of guardian for incapables? The citizens have expressed their will by deliberate action. The act of the General Assembly was passed in response to their nearly unanimous desire. It was submitted in due legal form to the vote of the citizens, and was ratified by them with great unanimity. The measure thus accepted, committed the management of this business affair to a board created for that purpose.

Now, what has happened to warrant Mr. Fallis in proposing to set all this aside? Who commissioned him? Has there been any expression of the popular will? Has there been even that easily procured thing—a petition for legislative relief to the citizens from their own acts? It seems to us that it is necessary that Mr. Fallis should show some authority for his proposal to take an affair of the citizens out of their own hands, to save himself from the character of a conspirator against the rights of his own constituents. At the least, he mistakes his calling altogether if he fancies that in electing him one of the delegates from Hamilton county the citizens conferred on him plenary power over an affair in which they had acted with much greater deliberation, and which they had conferred on another agency.

The character which Mr. Fallis would give to the citizens of Cincinnati is as false as his assumption of the authority to abolish their solemn acts is unfounded and impudent. He would represent them to the people outside as insincere in all their course on this railroad measure, or as childishy incapable of knowing what they wanted, and as fickle in casting away the thing they long for as soon as they had attained it. He would disgrace the citizens before all the country with which they are desiring trade relations, and would make their public faith and their undertakings a by-word. A member of a legislative body who presents his constituents in such an ignominious character ought to be able to show some authority for thus representing them. Where is Mr. Fallis' authority? What has he got to show?

We are aware of the ready argument that will be offered in reply, that the Schiff bill to redistrict the city was also introduced without the support of any petitions. But this is right in the line of our reason against Mr. Fallis' assumption. The Schiff bill is for the discharge of the duty of the General Assembly to secure to our citizens equal representation in the municipal government, which they are now deprived of. This is the duty of the Legislature at all times. Equal representation is a right which does not need petitions to call it into existence. It must be taken for granted that every citizen is in favor of equality of representation, and that if any one opposes it, the very fact of that opposition confesses an illegal object. On the other hand, the citizens have fully and deliberately acted on the

Southern Railroad bill, and they have not committed it to Mr. Fallis. He is asking the General Assembly to deprive them of the control of this affair, and to set up a little scheme of his own.

The bill which Mr. Fallis has presented is as flagrant a contempt for legal principles as his action is of the principles of representative government. He proposes that the City Council may declare a railroad necessary, and that then the Presidents of the two Boards and the Mayor shall dispense the three million fund, and shall contract with an individual to build the road. In this care to restrict the contract to an individual, he recognizes that such a contract with a railroad company would be illegal under that provision of the Constitution which forbids the General Assembly to authorize any municipality "to become a stockholder in any joint stock company, corporation, or association whatever, or to raise money, or to loan its credit to, or in aid of, any such company, corporation, or association."

Mr. Fallis thinks to get around the prohibition as to a railroad company by restricting the dealings of this three million board to an individual. Will this circumvent the law? When the law has forbidden the city from entering into such business partnership with a company, can the city do it with an individual? Will a lawyer who has any reputation at stake, risk it on that point? But if we allow that law is so slippery as Mr. Fallis purposes to make it, we come to an inquiry: How is an individual going to build a railroad? How is he going to get the grant of eminent domain which is required to get the right of way? What Legislature will grant this one-man power? Of course Mr. Fallis is not so simple as to suppose that an individual can get such a grant of power as would be required to build a railroad. But evidently he supposes that this individual can be a go-between for the company which will receive the gift and build the road.

But Mr. Fallis is unable to keep up his method of evading the Constitution by having the right hand effect ignorance of what the left hand is doing; for before he gets through, the railroad, in its real corporate shape, has to be brought in to enter into certain stipulations, and to give to the city a mortgage on the property of the company conditioning the return of the bonus in case the company shall not carry out its obligations. Now, if

the legality of this bill depends on the city's dealing with this individual, and knowing no company in the relation, does not the point of legality fade away altogether when the company is brought in to contract with the city? To be sure, Mr. Fallis does not mention a railroad company. He studiously avoids it by talking of the "road" as the thing that is to bind itself to do certain things, as for example: "Nor shall the bonus be paid * * * until the road has given to the city a first mortgage on it, conditioned for the return to the city of the said bonus in the event that the road, in its operations, shall violate the provisions of said contract."

This shows the strait to which Mr. Fallis is reduced in hiding the fact that there is a company to be contracted with. But the loose phraseology of contracting with a road, and of a road violating its obligations, appropriate as it may seem to a young legislator for a law, will not get around a constitutional prohibition against lending the credit of the city to a railroad company. This shuffling clause brings in a railroad company to execute a mortgage to the city, conditioned upon the aid which the city has given it. It brings in a contract which recognizes that the thing done is just what the Constitution forbids when it declares that the General Assembly shall never authorize any city, etc., "to loan its credit to, or in aid of, any such company; corporation, or association."

But the absurd and shuffling illegality of this bill is not our main objection to it. If it were to be enacted, we should hope for the protection of the courts. It is a plan to corrupt the ward elections, and to make a three million plunder fund. The unjust apportionment of the city for representation would furnish a facility to the scheme. The fact that there are wards in this city where a character notorious for corruption is no impediment to an election, and where a great plunder fund would confer irresistible electioneering power on those who would dispense it most corruptly, would give most dangerous facilities. Citizens of a suspicious turn of mind may see in this scheme the wishes of a railroad monopoly which prefers to carry its points by manipulating Legislatures and other government agencies rather than to incur open competition. The fact that it is approved as a good

thing if it were legal, by a city journal which has a microscopic vision for small jobs, is also suggestive in the same direction.

There is nothing that such a board can do in negotiating for the building of the Southern Railroad that the trustees can not accomplish in a better manner by the authority conferred on them. The bill proposes to throw away all that has been accomplished by them, and to begin with a new scheme and a new act of legislation, which is on its face so foolish as to appear insincere, and which, in its own awkward contortions confesses its unconstitutionality. It proposes also to throw away a grant in Tennessee which can not be repeated. Its only serious effect is to publish to those who are interested with this city in the Southern Railroad the imputation cast by one of her representatives, that in this undertaking she was insincere, and that now, when she is likely to get the legal grant she has been asking for, she wants to provide a shuffling way to back out of it. This is the character which Mr. Fallis represents. But the citizens of Cincinnati have acted upon this matter with all deliberation, and have placed the affair in other hands; therefore, Mr. Fallis with his bill is acting wholly outside of his representative capacity.

THE PROPOSED SOUTHERN RAILROAD.

[From the Cincinnati Gazette. Feb. 19, 1872.]

We have profound respect for the opinions of citizens on all subjects of public concern. It is not to be expected that people will be of one mind, and those who take the negative side, even if in the minority, have as good a right to be heard as those who take the affirmative; but the course of those who appear before the public on either side is liable to fair and open criticism; and we have a right, in certain contingencies, to scrutinize their motives.

While, therefore, we take care to hear and read all that is said in opposition to the Southern Railroad scheme, and give due weight to the utterances of its opponents, we are bound to question the sincerity of their course, and to ask if there is not something behind all this skirmishing that is not fairly presented by

demonstrations at the front, and to inquire, if this bushwhacking does not mean the defeat of the Southern road, what it does mean?

That the proposed enterprise is an extraordinary one is very well understood, and that people should desire to have it carried out without involving the city in vast financial responsibilities is not surprising. There are not probably one hundred people in this city who would advocate the building of this road in the name and with means provided by the city corporation as a matter of choice, and it is advocated only as a matter of necessity. It has been decided, however, that the Southern Railroad is absolutely necessary to the commercial growth and prosperity of this city. This no one pretends to deny. That it will benefit Kentucky also we admit, and that it will put money into the pockets of the Southern people with whom we aim to form close connections is not to be denied. We do not deny it. On the contrary, we are glad to contemplate the growth and prosperity of Kentucky and of the Southern States as one of the certain results of the proposed road. The commercial interests of a people can not be divided by State lines. Those who would draw such lines do not understand the first principles of political economy. An embargo upon the commerce between this city and the South is a tax upon both. It is a burden that one can not bear without inflicting injury upon the other. By way of illustration, we may mention that we have before us a private letter from E. D. Mansfield, who is spending the winter at Aiken, S. C., in which he informs us that in consequence of inadequate transportation facilities between that country and this, articles manufactured in Cincinnati sell at Aiken at double the price for which they are retailed in this city.

To cheapen those articles would be a mutual advantage. To open that market and the whole South to our manufactures would benefit Cincinnati immensely, as it would also the consumers. The same is true of the products of the South which are sent to the States north of the Ohio in exchange. Direct and cheap railroad communication, therefore, would proportionately develop the resources of both sections.

But we need not argue the importance of a direct railroad from Cincinnati to the South. This question was decided thirty years

ago, and it has been affirmed and reaffirmed every year since. A few years since it was proposed to raise by private subscription in this city the sum of one million dollars to be given as a bonus to any company that would build a Southern railroad. Many of our citizens labored hard on that subscription, and about half a million was obtained. That was not sufficient, and the plan was abandoned. The subscriptions were most unequally distributed, too, and were made by active business men chiefly. The real estate owners and bankers, worth their half millions and millions, subscribed nothing, or very little, and we would look in vain up and down that list for the names of gentlemen who are now so vigorously seeking to defeat the only practical scheme that has ever been presented to secure a Southern road.

It is true these gentlemen tell us they favor a Southern road; it is only the Ferguson plan they oppose. We suppose our readers have heard of the man who favored the Maine law, but opposed its execution. The opponents of the Ferguson plan are in that predicament exactly. This plan is constitutional. No other constitutional plan has been proposed. Various schemes have been suggested, which are embodied in the Fallis bill, the object of which is to place three million dollars in the hands of the City Council to be given away; but the decision of the Supreme Court, which we printed in full last week, disposed of that and all similar projects in advance. No sensible man, therefore, would propose any such scheme, and, even if it were practicable, it would be foolish to place a fund of three millions or any other large sum in the hands of the City Council, to be given away. Therefore when supplementary bills are proposed, we may be sure the object is to prevent the building of the Southern road, or manufacture a public opinion to force the Trustees to buy a road already built at such price as its owners may fix, and then give it away. This may be the best thing to do; but the time has not come to pronounce upon it, and will not come until the Trustees shall have completed their surveys, and matured their plans and ascertained all that can be done. The effect of the present opposition, if not its object, is to destroy confidence in the Trustees, and by some sort of a shuffle place the city at the mercy of speculators. Yet these Trustees have done nothing to forfeit the confidence of the people. They were appointed to do a certain thing, and they

have proceeded thus far economically and wisely. No valid objection can be made to any act of theirs. The Ferguson law was passed at the request of the people of Cincinnati; it was ratified by an almost unanimous vote of the taxpayers; men were appointed Trustees by the Superior Court who are among our largest taxpayers, and whose property is all in Cincinnati. They have procured a decision of the Supreme Court affirming the constitutionality of the law; they have secured a charter from the State of Kentucky which was ungenerously granted, it is true, but which will, we may be sure, be more generously amended; they have pushed the surveys with all reasonable energy, and will soon be ready to present their plans, and *have spent, thus far, less than \$80,000*. Therefore, we say, they deserve the confidence of the people, and have proved themselves worthy of the great trust which, unsolicited, was placed in their hands by the people. It will be time enough to censure or vote a want of confidence when the Trustees shall have done something deserving such action; and it will be time enough to discuss the plans, or to propose plans, when the Trustees shall have come before the public, as they will do before striking a blow, with their plans and specifications. Thus far the opponents of the road have proceeded upon the theory that the Trustees would do a foolish thing; that they would plunge the city recklessly into debt; that they would undertake the building of the road without counting its cost; and that they would withhold their plans from the people and draw the latter in gradually by means of deceptive estimates. These Trustees are not speculators. They have been charged with a sacred trust, and they are the last men in Cincinnati to violate or abuse it. If those who insinuate distrust would name the man or the men of doubtful character, their course would be more commendable; but this is not done, nor will it be done. Therefore we say the opposition is not in the interests of the city, and will not bear close investigation.

The bugbear of taxation is also held up, and bankers are put upon the stand to depreciate our credit in advance. The object of all this is to frighten tax payers. We do not underestimate the consequences of a heavy debt; but we can not overestimate the importance of the Southern road; nor can we be frightened by wild estimates as to cost. But even if we should

sink ten millions in a Southern road—a contingency no one has any reason to apprehend—that would be nothing compared with the losses we are suffering for want of adequate railroad facilities southward. Intelligent pork merchants estimate the loss of that trade alone in this city, this season, by reason of their inability to reach the Southern market, at *one million dollars*. Now let the Freight Bureau supplement this by figuring up the losses to our merchants and manufacturers by reason of inability to ship; by exorbitant freight charges, and by discriminations against this city, and it will be found that our indirect taxes—taxes that are crippling our industries and checking the growth of the city—are ten times greater than would be the interest on ten millions of dollars, even if the Trustees should be so foolish as to sink that amount.

This is the way to look at the question. This is the way in which it was viewed when the Ferguson law was ratified by our citizens.

Cincinnati is now too much at the mercy of railroad monopolies. Every day we are being discriminated against, and the life blood is being squeezed out of our industries. Our natural advantages are altogether overbalanced by extortionate railroad management, and we are prevented from competing on fair terms in the great Southern markets, because we have not railroads enough and because we have no control over those we have.

Stop your Eggleston avenues, your Gilbert avenues, your McLean avenues, your Columbia avenues, your City Halls, your parks, and your sewers, if you would reduce the taxes, and open up the markets of the South, from which we are now practically excluded, to our merchants and manufacturers. When this shall be done, there will be means to carry out city improvements, because we shall have a great and prosperous city to improve, and an overflowing and thrifty population to enjoy our avenues and parks.

The time has come to strike a great blow for Cincinnati; the way is open for the first time in thirty years, and rather than miss this opportunity it would be better that those who oppose this enterprise should do as some one is said to have done lately—sell out and emigrate. What we want here now is not men of that

kind, but public spirit, and if we shall have public spirit, we will have a Southern Railroad that will not discriminate against our people; that will reach the Southern markets by the shortest line; that will enable us to compete successfully with other cities; and Cincinnati will enter upon a new era of prosperity that has had no equal in our history, and that will amaze the old fogies who threaten to run away if the people take hold of an idea above a picayune.

Let us stand by the Southern Trustees, and guard their rear against the fire of railroad monopolists and timid tax payers.

[From the Cincinnati Chronicle, Feb. 17, 1872.]

Having led off in the work of urging action to secure more direct Southern communication by rail, and persistently sustained this movement until now at last it has seemed on the verge of success, we are far from a feeling of gratification to see all that has been accomplished in danger of being lost, and the whole enterprise imperiled, by divided counsels. The city has once settled the method of doing this business, and now the way is clear. Is it wise to be in hot haste to let go the stone so laboriously rolled all but to the summit, just to see how magnificently it will go tearing its way to the bottom? Let all parties stop and consider. We have been nearly four years at work at this thing. It would be better to wait at least as many weeks before determining to undo the whole job.

THE RAILROAD SYSTEM OF THE SOUTH WHICH MAY BE CONNECTED WITH CINCINNATI.

[From the Railroad Record, Feb. 22, 1872.]

Since there seems to be a probability that Cincinnati may realize at least a part of her scheme of Southern connection, perhaps the very first question is, what is the railroad system of the South? And with what lines may we be connected? In former articles I have endeavored to show what are the condition, population, and resources of the Southern Atlantic States, and now I will trace out their railroads, and the points connected. First, let me make a remark on some things around us, viz: You will see in the papers that the *Louisville and Nashville Railroad* have succeeded, or have a prospect of succeeding in a part of their grand scheme of cutting off from Cincinnati the advantages she expects from a "Southern road." This is extending a branch road through South-Eastern Kentucky to connect with the great Virginia and Tennessee line. For several months past the L. & N. R. R. Co. have had their bonds on the New York market for several millions of dollars. They have no doubt succeeded in getting the money. The result is that it is now announced that company will complete the residue of the road (being 166 miles) to the connection with the Virginia road at Bristol. That line will then be a trunk line through the Virginia Valley to Norfolk. So far as this passes through the South-Eastern corner of Kentucky it will take a portion of trade that might have come to Cincinnati; but in regard to Norfolk, Southern Virginia and North Carolina, it will have no effect; for the *Chesapeake and Ohio Railroad* will bring the trade of all that country on a shorter and better line than it can be carried to Louisville. I am afraid Cincinnati does not understand or appreciate perfectly the great future value of the *Chesapeake & Ohio* to her interests. If, as seems probable, the Dayton and Hillsboro people succeed in getting their line through to the *Chesapeake & Ohio*, then Cincinnati ought to lose no time in getting a connection at Hillsboro, or some convenient point on the line. But of this I need not speak

here. Let us look at the Southern roads ahead and made. Supposing a direct road to Chattanooga, as contemplated, then the Southern connections stand thus:

1. <i>Of South Carolina:</i>	miles.
Atlanta to Augusta (Georgia R. R.).....	171
Augusta to Charleston (S. C. R. R.).....	137
Augusta to Columbia.....	85
Columbia to Greenville.....	143
Columbia to Branchville.....	68
Charleston to Cheraw.....	142
Columbia to Charlotte.....	107
Total.....	753

These roads you perceive go to every important point in South Carolina, and this connection is made through Augusta on the Savannah River. South Carolina, as I showed in a former article, has but 24,500 square miles—less than two-thirds of Ohio—and while this 750 miles seems comparatively small, it is nevertheless quite sufficient to make a connection with every commercial point in the State. Outside of Charleston and Columbia there is not a town of 3,000 inhabitants in the State. I will not give the railroads of North Carolina because the shortest connection with them will be through the *Chesapeake & Ohio Railroad*.

2. *Of Georgia.* Taking Chattanooga as the central point we have first the "Georgia road" as in the last section:

	miles.
Atlanta to Augusta.....	171
Augusta to Savannah.....	132
Chattanooga to Atlanta.....	138
Atlanta to West Point.....	87
Atlanta to Richmond.....	53
Atlanta to Macon	103
Macon to Millen.....	111
Marion to Brunswick.....	186
Marion to Eufaula, (Alabama).....	144
Rome to Kingston.....	20
Total.....	1,145

There is also a branch road to Columbia (Georgia) which should be included. Thus we see that 1,200 miles of road in

Georgia connecting with Atlanta, connects the Chattanooga road with every principal point in Georgia. Perhaps it would be interesting and proper to this part of the subject to show what are the principal towns in Georgia and how these roads connect them. I confess I am a little disappointed, on looking into the census for 1870, to find these Southern towns so comparatively small. Those of Georgia, however, are in the aggregate much more populous and important than those of South Carolina. The following are the principal towns of Georgia :

Savannah.....	28,235
Atlanta	21,789
Augusta.....	15,389
Macon.....	10,810
Columbus	7,401
Rome.....	2,748
Milledgeville.....	2,750
Brunswick.....	2,348

It will be seen that Georgia, called in the South the "Empire State of the South," has less than 100,000 people in all its towns ; for all, except the above are quite small. The railroads I have described pass through the whole of them, and thus a road centering at Chattanooga will touch all of them.

3. *Of Florida.* The part of Florida which is reached by railroads is comparatively small, but it is all that is worth while to reach. The following are the roads which reach the main points in Florida :

	miles.
Fernandina to Cedar Keys.....	154
Jacksonville to Tallahassee.....	189
Lawton to Live Oak.....	48
Total.....	391

These roads lead from Savannah and Jacksonville to the principal parts of Florida.

We now look at the Alabama connections, which in some respects are the most important. These are :

	miles.
Chattanooga, Tuscaloosa, & Meridian.....	295
Selma, Rome, & Dalton.....	236
Selma & Suez.....	35
West Point & Montgomery.....	138
Montgomery & Mobile	186
Total	886

The first of these roads will make the shortest and best route from Cincinnati to New Orleans, and the last will make the best to Mobile. We have then in these four States (South Carolina, Georgia, Florida and Alabama) disregarding all merely local and minor roads, the following summary of main lines of road connecting Cincinnati with all the principal cities and business places of the South :

	miles.
In South Carolina.....	753
In Georgia.....	1,145
In Florida	391
In Alabama.....	886
Total.....	3,175

In addition to this aggregate of main lines, there are at least 2,000 miles more of subsidiary lines, so that, on condition that the Southern road (as I have already said) shall be managed to do the same work for the same money, that Northern roads do, Cincinnati may send her products and merchandise to every town in the South in the shortest time and the least cost.

THE CINCINNATI SOUTHERN RAILROAD.

[From the Cincinnati Gazette, Feb. 26, 1872.]

The importance of the Cincinnati Southern road to this city no one questions. Those who oppose the Ferguson plan still admit the necessity of the road, but while they claim it would be bad policy for the city to build it, because it would involve the loss of all the money put into it, other parties—railroad men, for example—might do the work profitably, for a bonus of three millions of dollars. "Bonus" is the objective point of the opponents of

the Ferguson plan, but the arguments to sustain these objections are not sound, and do not bear investigation. In the first place, they assume to know more about the cost of the road than the engineers who surveyed the several routes and estimated the cost of the work. Experts are called to enlighten the public who never built a railroad, and their figures are put against the figures of experienced engineers, who have, as remarked, surveyed the different routes. These experts say the road would cost anywhere from twenty to forty millions, and every dollar put into it by the city of Cincinnati would be sunk. This off-hand picture is well calculated to frighten the tax payers. But, then, in the same breath we are told if the city would buy the Kentucky Central for three millions and a half, and donate it to a company that would extend the road to Chattanooga, the thing would be a success; but how this would be is not explained. If it would cost twenty-five millions to build a road from Cincinnati to Chattanooga, and that would involve a clear loss of ten millions, upon what basis could a company build a road in consideration of a bonus of three and a half millions? The distance from Cincinnati to Chattanooga over the proposed route is 330 miles. The length of the Kentucky Central is 112 miles. Now, if it cost three millions to build and equip 112 miles, what would it cost to *build* without equipment, 330 miles? If a road one-third of the whole distance, which stops in a corn field, and has no through business, pays on a basis of three and a half millions, by what rule is a conclusion arrived that a road three times as long, with valuable through connections, would not pay? These are questions that admit of intelligent answers, and we refer them to the opponents of the Ferguson plan, while we examine the cost of other roads that have been constructed. We are told the Short Line, between this city and Dayton, costs, without equipment, fifty thousand dollars per mile, and this is set down by experts as the minimum cost of the Southern road. The length of the proposed Southern road is 330 miles, which, multiplied by \$50,000, gives \$16,500,000 as the minimum cost. To this is added ten millions for contingencies by reason of the rough country through which the Southern road is to pass, and by reason of the further fact that the road is not to be managed by railroad men. This is the way experts figure up their twenty-five or thirty millions

by which it is expected tax payers will be frightened out of their boots.

Now, we have to inquire, does the Cincinnati and Dayton road cost \$50,000 per mile without equipments? Assuming that it does, because the statement has been repeatedly made without contradiction, it is about time those who pay for that job were looking into the matter. We have it from the highest authority that the Baltimore and Ohio Railroad Company have contracted for a road two hundred miles long, from a point near Sandusky to Chicago, for twenty-five thousand dollars per mile, ready for the rolling stock. It costs no more to build the road between this city and Dayton than it does the road from Sandusky to Chicago, unless it may be for the single item of right of way. It remains, therefore, for those who hold up the Cincinnati & Dayton line as a standard of cost to explain why it cost twice as much as the road the Baltimore & Ohio Company is building. This point need not be further discussed at present.

Next we come to the point that the Kentucky Central and Louisville & Nashville roads, with equipments, did not cost \$30,000 per mile, and they were both expensive roads to build and were built largely on the proceeds of bonds sold at a heavy discount. This is another feature the experts should attempt to explain if they would make headway in manufacturing a sentiment here against the Ferguson plan, or in favor of those who are itching for a bonus of three to five million dollars.

This brings us to another step in this line of inquiry. The Cumberland & Ohio Railroad Company has recently let a contract for the construction of the first one hundred and twenty miles of its road, at *twenty-three thousand dollars per mile*, all ready for the rolling stock. This stretch of road runs through a pretty rough country, and may be taken as about the average of the Cincinnati Southern road. This we know is right in the region of facts and may not suit experts who talk to town meetings, but business men will prefer facts to fancy. Now, this is what has been done in the year 1872.

Suppose, calculating from this reliable basis, the Southern road should cost, \$25,000 per mile, its whole cost, exclusive of equipment, would be **\$8,250,000**. Is it not reasonable, there-

fore, for the people of Cincinnati to wait until the Trustees shall complete their surveys and obtain actual bids for the construction of the road before going off after those who talk wildly about its cost, and who have never seen, nor asked to see, a plan or an estimate of the proposed road, and before the road has even been located? So it seems to us. It is not wise, if we are to have this road—we will have it somehow—for our citizens to aid a movement against the Trustees that is calculated to take money out of the tax payers. It certainly is not wise to have a railroad ring fastened upon us, either directly or indirectly, that would charge for building the road double its actual cost, and then base a freight and passenger tariff upon its inflated value. We not only need a Southern railroad, but we need a road that will be operated in the interests of the people, and not in the interests of its officers.

This brings us to introduce a letter from a well known citizen of Chattanooga, with reference to what the Trustees may calculate upon in the way of donations. This speaks of the feeling in Tennessee. The same feeling prevails in Kentucky, and it is entirely safe to say that the donations along the line of the road will be equivalent to a very liberal land grant.

ST. NICHOLAS HOTEL, NEW YORK, Feb. 15, 1872.

DEAR SIR: As there appears to be some apprehension in Cincinnati that the \$10,000,000 appropriation will not be enough to complete the Cincinnati Southern Railroad, I write to call your attention to the fact that a considerable amount of assistance can be obtained along the line. For instance: The company which I represent will give your road the ground for right of way and depots in the city of Chattanooga, worth now \$100,000. They also will give you right of way 15 miles in the Tennessee Valley, on the south side of the mountains, and grounds and brick for building shops for repairs at the foot of the mountain at Rockwood, on the south side. I can safely assure you that the right of way through Tennessee will not cost one dollar, including "eminent domain." By proper management the timber for ties, and probably the ties, can be secured without cost. The people along the line are ready to do anything in their power to assist you. They have nothing but lands and timber, with exhaustless beds of iron and coal. Of these mineral lands they will give freely. Our Roane Iron Company can give you a train load of

freight each way from Rockwood per day, and increase the amount rapidly after the road is completed. The Tennessee portion of the line is certainly a very cheap one to build, and the local traffic would be large, while by taking the Emery river route you secure the shortest possible line to Charleston and Chattanooga.

I am, very respectfully,

J. T. WILDER.

CINCINNATI SOUTHERN RAILWAY.

[From the Cincinnati Commercial, Dec. 27, 1871.]

Major-General W. S. Rosecrans has written the following letter in reference to our proposed Southern Railway. Estimates of the cost of the Cincinnati road to Chattanooga may be figured from the statements made in the communication—the entire line being three hundred and thirty-three miles by the shortest survey, and three hundred and forty by the longest. The following is the letter :

“ BURNET HOUSE,)
CINCINNATI, December 25, 1871.)

“ MY DEAR FRIEND—The Denver and Rio Grande Railway runs south from Denver, Colorado, at the Eastern foot of the Rocky Mountains, over rolling prairie and points of foot hills and in the first fifty miles ascends two thousand three hundred feet, and descends about seventeen or eighteen hundred feet again before it reaches Colorado Springs, seventy-six miles from Denver, to which distance it is now in operation.

“ As I rode on the pilot and engine most of the distance, and noticed the character of the work and cutting, filling and bridging, including rock cuttings, I must say to you that I can not think of any Ohio road that would average as much work per mile, on any section of seventy-six miles as this road.

“ From the general character of the topography, shown in the very complete surveys of your Cincinnati Southern road, I don't think that, excepting the large bridges, it need be much more expensive than the Denver and Rio Grande Railway so far.

“ As to the cost of this, I know that the seventy-six miles now in operation cost for construction and equipment less than one million of dollars. As to the amount of equipment, I can also state that it was sufficient to enable the road to earn \$6,100 for the week ending December 7th instant.

"When these facts are considered, and that freights on iron and rolling stock for your road would be at least one and a half per cent. per pound less than for that road, engineers can calculate what your line would likely average per mile. If that road cost less than \$13,500 per mile under such circumstances, and thus equipped, what would yours cost, is a question which your surveyors and engineers can compute, remembering as they must that the three feet gauge is more pliable and can be made thus to save cutting, filling and tunneling unavoidable with the standard gauge.

"In view of all this, I think your line ought not to cost more than twice that of the Denver and Rio Grande Railroad, to build and equip it adequate for the first year's work.

"Yours truly, W. S. ROSECURANS.

"HON. E. A. FERGUSON, Cincinnati, Ohio."

CINCINNATI SOUTHERN RAILWAY.

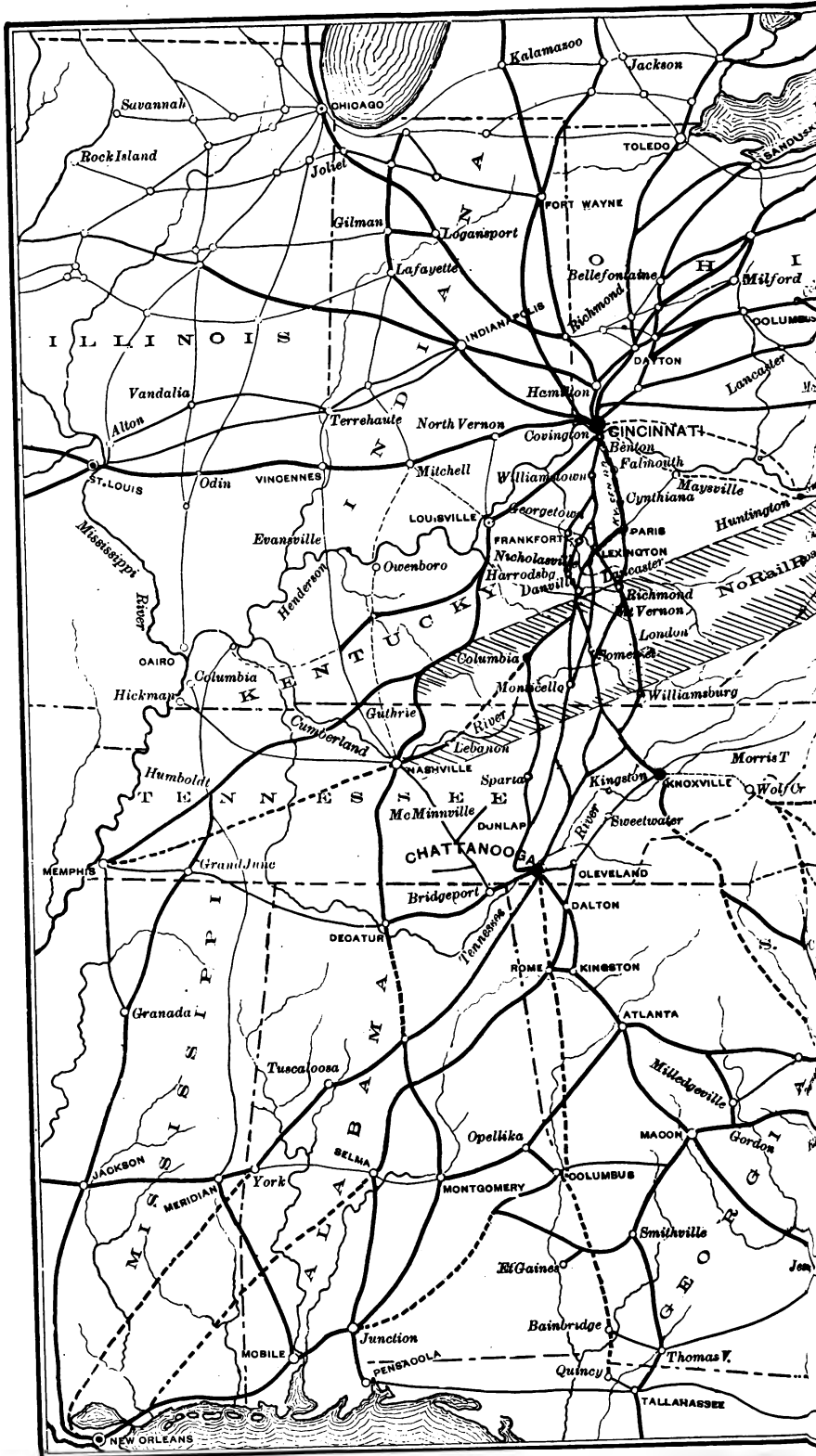
Address to Citizens of Cincinnati by the Executive Committee of the Board of Trade, Chamber of Commerce, and City Council, upon submission of the question to the vote of the people, June, 1869.

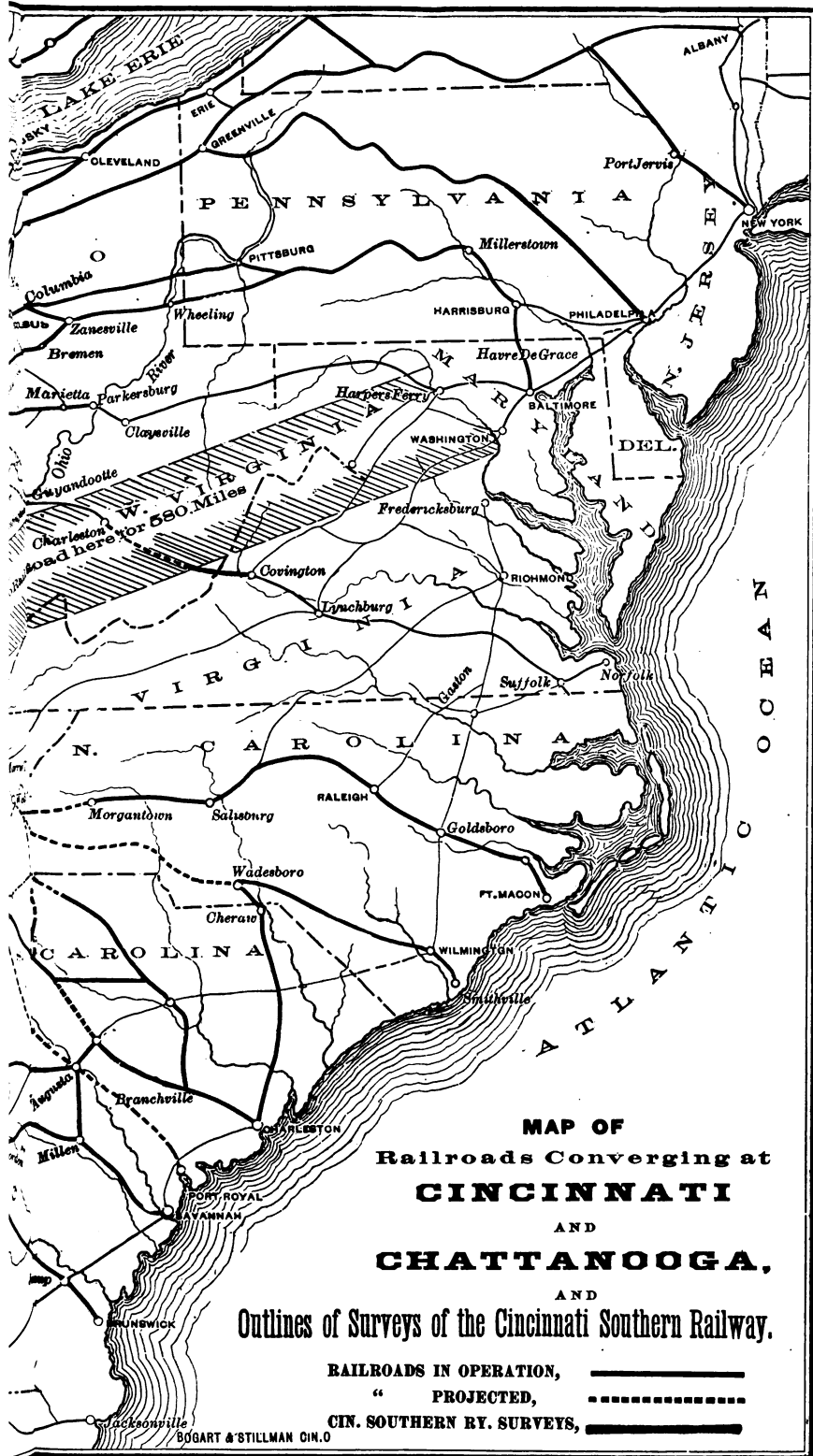
FELLOW CITIZENS:—

The Legislature of the State of Ohio having granted power to cities of the first class, having a population exceeding one hundred and fifty thousand inhabitants, whenever it shall be declared by resolution of the City Council of such city, as necessary to its welfare that a line of railroad should be constructed between certain termini, one of which shall be said city; and upon the completion of certain other preliminary arrangements named in the act, to borrow money, not exceeding ten million dollars, for the purpose of the construction of such line of railway: your City Council having declared by a unanimous vote in favor of the construction of such a line of railway to connect the city of Cincinnati with the Southern system of railroads, and in accordance with the wise provisions of the act, where such grave responsibilities are to be assumed, it will become the duty of the citizens, on the 26th of June, to affirm the action of their representatives.

The object of the people of Cincinnati in making a Southern railroad, has several times been set forth in addresses to the public. It is to enlarge the market for her manufactures, to extend the area of commerce, to aid in developing a district of country, which is naturally tributary to this city—and by accomplishing this—to give greater employment to labor, and increased value to property. In one word—it is to secure greater growth and prosperity to this city. That this may be seen more distinctly, we









MAP OF

THE TERRITORY OF THE UNITED STATES
OF AMERICA
IN THE YEAR 1800
BY JAMES M. SMITH
NEW YORK: J. B. LIPPINCOTT & CO. 1880

will state more at length some of the *benefits and advantages* expected to flow from this great enterprise :

1. There is an immense country south of the Ohio river, in which no city north or east of Cincinnati, can compete with it, on equal terms, in trade or in the sale of manufactures, since none of them can reach it so quickly, or so cheaply. Yet to only a small part of that district is this city now accessible by railroad. It is, therefore, evident that if we can get a railroad into the heart of that region, we shall accomplish the double purpose of gaining a direct and immediate access to that market, and of rapidly increasing the market itself, by developing the growth of the country.

The extent of this country, to which Cincinnati will assuredly become the commercial metropolis, embraces about 200,000 square miles, and in the whole of it, there is no large town ; to it, no eastern or northern city is, or can be, as accessible as Cincinnati. This is the great fact, and when we look at this, we see far beyond the Ohio, a magnificent prize, ready to fall into our hands. It is like a golden apple, which we can pluck when we choose. When this Southern Railroad shall be extended from Cincinnati to the proposed Southern terminus—Chattanooga—it will there connect with roads ramifying to all parts of the Southern States and will draw to itself branches on every side. The country will soon be interpenetrated with railways. Its genial climate, rich agricultural resources, and wonderful deposits of mineral wealth will soon make it become rich and populous, demanding all the energies of Cincinnati, even if fourfold its present magnitude, to supply its wants.

2. After looking at the vastness of this new field of enterprise, let us see the extent of railway systems, which this trunk line would unite. In Ohio and Indiana on the north and leading directly to Cincinnati, are 6,000 miles of railroad. South of East Tennessee and converging there, are all of 4,000 miles more. But between these two systems is what has hitherto been almost an impassable barrier—the thinly settled portion of Kentucky and Tennessee. A section of country that needs but to be made accessible by railroad to assume a front rank in material development. Take up your map and try to find a route by which you

can go from the Northern railroad center in Cincinnati to the Southern in East Tennessee. Where will you go? It can be done; but you will first go almost due West, then South, then East, and then North! In fine, you will have gone three-fourths round that district, and almost three times the distance you need have gone to get there on a tolerably direct railroad. If, therefore, there were no object but that of connecting the great Southern system of railroads with Cincinnati, it would be an object worthy of our greatest efforts. Make two or three hundred miles of good road, and you will gain the traffic of 4,000 miles, for it would seem as if the entire system of railroads at the South had been constructed on purpose to pour its traffic through the proposed trunk line, like water gathered in a funnel. You turn the faces of the Southern people towards the metropolis of the West, and make the cotton fields one of the markets of Cincinnati.

3. Look now to the special interests of manufactures in this city. It is safe to say, that 60,000 people in Cincinnati are engaged in the various operations of manufactures (exclusive of local mechanics), some parts of whose products are exported, and to whom it is a great object to extend their markets, that they may increase their products and their profits. In the multiplicity of its manufactures, Cincinnati has been remarkable. Its fabrics have been sold over a region of country one thousand miles in diameter; and the varieties of those fabrics have been constantly increasing. In ten years, from 1840 to 1850, more than fifty (50) new branches of arts and manufactures were introduced into this city; but it is now meeting competition in the great and flourishing towns which arise on the lakes and the Mississippi. This is the case in all the great district of the Northwest. But in the region which we have described, this competition can not be successful against us, if we can only get a direct route to it. There is a greater extent of country accessible to Cincinnati manufactures, and which can be supplied from no other quarter as well, than is within the exclusive reach of any other city in the United States. It is well known the Southern towns neither are, nor are likely to become, manufacturing places. Their supply of manufactured goods has heretofore been obtained almost entirely from the East, shipped coast-wise. This, and the

return shipment of produce has made the great bulk of the immense coasting trade between the Eastern and Southern States. But it is very evident, that an article of manufacture, in iron, wood or leather, for example, can not be shipped a greater distance coast-wise, then transhipped and carried on land, in competition with the same articles from the interior, without transshipment. Except for the mere coast itself, this competition can not be maintained by Eastern manufacturers.

It is an inevitable conclusion from the facts we have given, that the manufactures of Cincinnati must receive a great impulse, and be extended over a much wider area by the Southern road, which in fact will create a market for them almost to the Atlantic Coast.

4. Now, let the merchants of Cincinnati look to their account in this matter. They are in the same condition, as to this, with the manufacturers. It is not to be denied that in recent years, our merchants have met with unexpected competition. This arises from the fact that they have been trading almost exclusively with districts of country in which competition must every day increase. Cleveland, Toledo, Chicago on the Lakes, St. Louis on the Mississippi, and Louisville on the Ohio, are all growing up to be great cities. They extend the area of their trade to meet ours midway; in those markets North and West it is not possible to hold any exclusive advantages. But this is not true of that great country which extends South of us—there Cincinnati will have exclusive advantages—advantages which can not be taken away from her. Some one may say that the merchant will meet competition in the South from the Eastern Atlantic Cities. Not so at all, till you approach very near the Atlantic Coast.

Further the decreased cost of transportation of the products of the South—rice, sugar, cotton, coffee, fruits, &c., will enable the merchants of Cincinnati to compete advantageously with Northern and Eastern cities for this class of trade North of the Ohio river. The construction of the Southern road will thus assist our merchants to again recover some territory lost by the development of rival cities North and West of us.

It is well known that Cincinnati cured meats are now sold in the interior of North and South Carolina. Can any one ever

imagine that these products can be sent to Baltimore, reshipped down the Chesapeake, sent to the Southern coast, transhipped and sent into the interior, as cheaply as they can be sent on one line directly from this city? It is impossible. We may consider then, without any exaggeration, that as the result of making a Southern direct road from Cincinnati, the whole 4,000 miles of Southern railroads and their branches will be as tributary to the trade of Cincinnati as the roads on the North which now concentrate here. The Southern road will be, for the merchants of Cincinnati, not so much a mere railroad as a grand bridge, of which Cincinnati holds the gate; a bridge which bridges over the gulf which separates the Northern and Southern systems of railroads, and a bridge over which the traffic of 10,000 miles of railroad must pass, and pay its tribute to this great metropolis.

5. To the builders, mechanics, and laborers of Cincinnati, this work presents obvious benefits, scarcely ever equaled. Cities live by trade and manufactures. If these languish, buildings cease to be erected; mechanical occupations grow dull, and laborers are out of employment. At the present time Cincinnati averages but a thousand new structures per annum. But at the rate of growth which she formerly had, she would build two thousand annually; and with the stimulus which a Southern trade trebled in value would give, might be expected to increase its buildings even more rapidly than that. Trade and manufactures increase population and wealth. Population demands houses, and wealth furnishes the means to build them. Stores, warehouses, factories, churches, and public buildings, all arise with enlarged commerce and productive industry. What is profitable for trade and manufactures is profitable for the mechanic and laborer. Each depends upon the other, and all grow up with increased markets, new outlets, and new growth. All new works and new enterprises furnish new employment for the laborer, and enables him to share in the profits and general prosperity of the community.

The necessary distribution of money incident to the construction of the road will be felt at once by all classes—the mechanic, the laborer, the builder, and the merchant. The prepa-

ration of material, the work of construction, and the increase of traffic, will furnish an active field for the exercises of energy, diversity of talent and skill, and secure prosperity, growth, and development to every department of industry.

6. *To the holders of real estate*, all the arguments which apply to other members of the community, apply with greater force. Diminish the general business of any city, and you lessen the demand for houses and stores, and you lessen the demand for lots to build upon. There is no species of property which so certainly diminishes in value with the reduction of business as does real estate. There are cities in Europe where no man expects to sell a house or lot for what he gave for it; because business is no longer increasing, and there is no new demand for property. Till within a few years, property rose in Cincinnati with great rapidity, because the population increased 100 per cent. in ten years. Those were the days of great activity in all public improvements. Canals, roads, railroads, were making on every side, and business flowing in from every quarter. But the activity of growth declined with the decline of public improvements. The avenues of a city must continually extend, or the area of its markets can not be extended, and without increased markets, trade must languish, manufactures grow dull, and the laborer seek in vain for employment.

With prudence, honesty, and the exercise of ordinary business skill in construction and management, the Cincinnati Southern Railway, instead of being a burthen on the city treasury, will be a source of profit. The diversity of climate and the natural productions of the two sections of our country that will be united by this common band of commercial interest will furnish in their respective wants a full and profitable traffic in goods wares, and products both ways.

Fellow Citizens! We do not address you on a common topic, or with a view to common results. No city on this continent has ever had such a magnificent prize within its grasp. By the expenditure of less than five (5) per cent. on your capital, you can extend your markets over 200,000 square miles of territory which, without this effort, you can not get; because others will go there if you do not. You may bring four millions of people

within the area of your trade, who are now diverted from you to the cities of the Atlantic. You can increase the demand for your manufactures to fourfold the present extent! You can thus give employment to thousands of mechanics and laborers, who are now passing on to other cities of the West. You may increase the profits of all business, increase the number of the people, expand the limits of the city, crown its hills with new structures, and adorn them with new works of art. In fine, you may renew in Cincinnati the powerful impulse of progress, and maintain its position as the metropolis of the mighty West.

ACTION

—OF—

Board of Trade and Chamber of Commerce

AGAINST

ANY ALTERATION OR REPEAL

—OF THE—

ENABLING ACT.

ACTION OF BOARD OF TRADE.

The Board of Trade met in special session, on the evening of December 28, 1871, to consider the following preamble and resolution offered by N. Macneale, Esq., viz :

“ WHEREAS, An act of the General Assembly of Ohio, passed May 4, 1869, and decided by the Supreme Court to be constitutional, enables our city to build a Southern Railway, which can be operated for our special benefit ; and,

“ WHEREAS, The construction of such a road will be of inestimable benefit to the commercial and manufacturing interests of our city, and a means of largely increasing the value of real estate ; and,

“ WHEREAS, This increased prosperity will enable all classes of our citizens to pay larger taxes with greater ease than they pay the present taxes assessed ; and,

“ WHEREAS, The credit of our city will be much benefited by the increase of commerce, population and taxable property that will result from the completion of the proposed railway ; therefore,

"*Resolved*, That we will render all the assistance we can to the Trustees of our Southern Railway in procuring the necessary legislation for its construction, and will oppose any repeal of the act referred to, believing it the most equitable manner in which the funds necessary for the construction of the road can be obtained, dividing the burden in proper proportion on those who are to be benefited."

Which, after a protracted discussion, was almost unanimously adopted—eleven votes only being cast in the negative.

ACTION OF CHAMBER OF COMMERCE.

The members of the Chamber of Commerce, voted by ballot on January 8th, 1872, upon the question "Shall the Ferguson bill be repealed," with the following result:

In favor of Repeal.....147

Against Repeal.....361

Total vote,508

Majority against repeal.....214

REMONSTRANCE

—OF—

MERCHANTS, MANUFACTURERS AND TAX PAYERS

AGAINST

INTERFERENCE WITH THE ACT.

CINCINNATI, February 24, 1872.

To the Honorable, the House of Representatives of Ohio :

GENTLEMEN—The undersigned manufacturers, merchants, and tax-payers of Cincinnati respectfully, but earnestly, petition your honorable body to indefinitely postpone the bill recently presented for your consideration, a bill supplementary to an act entitled "An act to authorize cities of the first-class to build railroads, and to lease or operate the same," passed May 14, 1869.

The requisite authority to enable this city to build a railroad in its interests to the Central South already exists. The provisions of the bill granting this right have been accepted and endorsed by a vote of the people of the city with an unanimity unexampled in municipal history. Seventy thousand dollars have been expended in making the necessary surveys, profiles and estimates, which are now about complete. The Board of Trade and Chamber of Commerce, representative of the manufacturing industry and mercantile interests of the city, have very recently given emphatic expression in opposition to any interference with the law delegating to the city the authority to

construct the work, and we firmly believe that any effort to alter, amend, or repeal such law will result disastrously to the commercial prosperity and welfare of the city.

Josiah Kirby,	Kahn, Nathan & Co.,
C. W. Rowland,	M. Loth.
John Shillito & Co.,	W. J. Lippincott,
Mitchell & Rammelsberg Furniture	Geo. W. Jones,
Co., by Robt. Mitchell, Pres't,	M. Kleiner & Bro.,
Lane & Bodiey,	Hauck & Windisch,
Hall's Safe & Lock Co., by Jos. L. Schaller & Gerke,	John Kauffman & Co.,
Hall, Pres't.	Christian Moerlein,
Macneale & Urban,	N. Wolf & Co.,
Diebold & Kienzle,	M. Kauffman,
Mosler, Bahmann & Co.,	Michael Eckert,
James L. Haven & Co.,	J. M. F. Windisch,
Chamberlain & Co.,	Wm. H. Moore, Sons & Co.,
Putnam, Hooker & Co.,	Rauh Bros.,
German Savings Institution,	Sterre & Turner,
Strobridge & Co.,	Bloom & Wolf,
M. Greenwood & Co.,	Kruse & Bahlmann,
Wrightson & Co.,	Maness Bros. & Co.
James M. Clark & Co.,	Phillip Grapfield,
Post & Co.,	Garret Dorland,
Globe Rolling Mill Co.,	Victor, Bettmann & Co.,
Wm. Glenn & Sons,	Gibson Bros.,
R. M. Bishop & Co.,	James Howe,
Reis Bros. & Co.,	Duhme & Co.,
Taylor & Hoes,	W. J. M. Gordon,
Duckworth, Spence & Co.,	L. N. Smith & Co.,
Meader & Co.,	Stall & Meyer,
Hafer, Holmes & Co.,	Stix, Krouse & Co.,
Alex. McDonald & Co.,	May, Mayer & Co.,
H. L. Stiles & Co.,	S. Wildburg & Co.,
Barrett, Dole & Co.,	I. B. Pearce, of T., H. & Co.,
S. M. Barrett,	Lockwood, Nichols & Tice.
Horner & Gaff,	Klein, Detmer & Co.,
R. Macready & Co.,	W. F. Thorne & Co.,
Procter & Gamble,	Prichard, Smith & Co.,
Jas. H. Laws & Co.,	L. S. Barnes,
Bare, Shinkle & Howell,	Dickson, Clark & Co.,
F. Strauss & Co.,	Dickinson, Bishop & Co.,
Bicknell, Hunt & Schnell,	Alter, Winston & Co.,
J. T. Warren & Co.,	Bohm, Mack & Co.,
Chambers, Stevens & Co.,	McCrea, Barnes & McCrea,
Wallace & Ringle,	J. & L. Seasongood & Co.,
Thompson, Goodrich & Co.,	Mack, Stadler & Co.,
J. & A. Simpkinson & Co.,	Louis Stix & Co.,
Shaw, Barbour & Co.,	Menderson Frohman & Co.
J. J. Slevin & Sons,	Gennett, Ferriman & Co.,
Goodheart & Bro.,	Leon, Marks & Co.,
Bing, Steinheart & Co.,	G. & H. McFadden,
Roberts & Sellers,	Mellen, Brown & Co.,
Z. & S. B. Sachs,	John Gates & Co.,
Bourfeldt & Kaufman,	

Meis & Meyer,
 Maddux Brothers.
 Fecheimer, Frenkel & Co.,
 George H. Dean,
 L. Pappenheimer & Co.,
 Gideon Burton & Co.,
 J. Lowmann & Bro.,
 Hoffheimer Bros.
 Frank & Loeb,
 Jas. P. McNamara & Co.,
 Tweed & Andrews,
 For A. W. Wright & Co., R. W.,
 Louis Rosin,
 H. J. Clenburgh,
 H. F. West, Bro. & Co.,
 Chas. H. James,
 Marmet & Co.,
 Louis Wald & Co.,
 Kuhn, Stern & Co.,
 Jacob Elsas,
 Geo. F. Davis,
 Howell Gano & Co.,
 T. S. Johnson,
 John Morrison,

Specker, Buddeke & Co.,
 H. Tobias,
 Marblestone & Herlburn,
 Butterworth & Potts,
 James Gates & Co.,
 E. Meyer & Co.,
 Alex. Assur,
 Mohr, Solomon & Mohr,
 E. J. Wilson & Co.,
 Richard Smith,
 Morris & Reid,
 Cunningham & Son,
 H. T. Bowman,
 N. Macneale,
 Chas. F. Wilstach,
 Mears, Olhaber & Co.,
 J. George Sohn,
 C. Windisch, Muhlhauser & Bro.,
 Herman Lackman,
 Weyand & Jung,
 Andrew Brehm,
 J. L. Emmert,
 Cincinnati Ice Company,
 G. M. Herancourt,

And 383 others, representing in the aggregate, over \$62,000,000
 of taxable capital and property.

OPINION OF HON. T. M. COOLEY,

Chief Justice of the Supreme Court of Michigan, Lecturer upon "Constitutional Law"
in the Law Department of the University of Michigan; also, author of
"Constitutional Limitations."

ANN ARBOR, MICHIGAN, April 17, 1869.

A. E. MACOMBER, ESQ.—*Dear Sir*: The question you propose regarding the power of cities in Ohio to construct works of internal improvement, with legislative permission, seems to me one which the judicial decisions of your State have already settled. An unbroken series of those decisions has declared that in the absence of any express constitutional inhibition, it is competent for the legislative authority of the State to authorize municipalities to levy moneys under the taxing power, and appropriate the same in aid of railways and other great thoroughfares. This would only be permissible on the ground that the municipalities have an interest in the construction of such works so direct and immediate as to render it proper that the sovereign power of taxation should be exerted by them for the purpose, as it might be, for the highways entirely within their limits. Hitherto the power has been employed in aid of corporations, and the municipalities have either taken stock in such corporations, or have made to them loans of credit or money. Your revised Constitution forbids this by providing that "The

General Assembly shall never authorize any county, city, town or township, by a vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation or association whatever, or to raise money for, or loan its credit to, or in aid of any such company, corporation or association."

This provision, however, only prohibits the municipalities giving aid to works of public improvement in the modes before resorted to, and there is nothing in it to prevent, or that appears designed to prevent, the local authorities from levying taxes for the construction of railroads, when their own agencies are employed for the purpose. Indeed, it was always felt that there were objections in principle to cities, towns and counties becoming stockholders in corporations, or loaning money or credit to corporations, in order to secure the construction of works of public importance to the locality, which did not exist where the municipality took the construction of the work into its own hands, as it would have done if it had been a common street or any other purely local work. To allow the municipal authorities to give aid to private corporations in order to secure the construction of a public work, was unquestionably to introduce a new feature into the system of local self-government, while to authorize the local authorities to construct the same work themselves would be in entire harmony with the established principles and usages. It is very clear I think under the decisions of your Supreme Court that prior to the new Constitution it would have been entirely competent for the legislature to permit the local authorities to levy taxes for the construction of railroads to be managed and controlled by their own officers or agents, and it seems

equally clear that the clause above quoted from the constitution does not take away this power. You inquire whether it would be otherwise if the road when constructed was to extend beyond the limits of the State? I think not. Conceding, as your courts have repeatedly declared, that the municipalities may be allowed to expend taxes upon roads outside their own limits, I know of nothing to confine the expenditures to the limits of the State. The local importance of the road which justifies an exercise of the power of taxation to construct, does not depend upon the question whether it is entirely within the State or not, but upon the local facilities it affords to travel and commerce.

Very truly yours,

T. M. COOLEY.

PROCEEDINGS

—IN—

SUPERIOR COURT OF CINCINNATI.

Pleas at the city of Cincinnati, in the county of Hamilton and State of Ohio, in the Term of April, anno domini one thousand eight hundred and seventy, of the Superior Court of Cincinnati, held by the Hon. M. B. Hagans, one of the Judges of the said court, in separate session, sitting in room No. 1, in the court house in the city of Cincinnati county and State aforesaid.

SUPERIOR COURT OF CINCINNATI.

J. BRYANT WALKER, Solicitor of the City of Cincinnati
and a Taxpayer of said City,

Plaintiff,

VERSUS

The CITY OF CINCINNATI, CHAS. H. TITUS, Auditor, and
WILLIAM HOOPER, MILES GREENWOOD, RICHARD M. BISHOP,
PHILIP HEIDELBACH and EDWARD A. FERGUSON, Trustees
of the Cincinnati Southern Railway,

Defendants.

INJUNCTION AND OTHER RELIEF.

Be it remembered that heretofore, to-wit: on the 12th day of April, A. D. 1870, came the above named plaintiff and filed in the office of the clerk of this court his certain

petition and præcipe against the above named defendants, clothed in the words and figures following, to-wit:

J. BRYANT WALKER, Solicitor of the city
of Cincinnati, and a taxpayer of said
city,

vs.

THE CITY OF CINCINNATI, CHAS. H. TITUS,
Auditor, and WILLIAM HOOPER, MILES
GREENWOOD, RICHARD M. BISHOP, PHILIP
HEIDELBACH, and EDWARD A. FERGUSON,
Trustees of the Cincinnati Southern
Railway.

Superior Court
of Cincinnati,

No. 26,007.

(Petition.)

J. Bryant Walker states that he is the solicitor of the city of Cincinnati, and a taxpayer in the said city, and that by an act of the General Assembly of the State of Ohio, passed on the 4th day of May, eighteen hundred and sixty-nine, entitled "An act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants," it was enacted in the first, second, third and fourth sections thereof, as follows:

AN ACT relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants.

SECTION 1. Be it enacted by the General Assembly of the State of Ohio, that whenever in any city of the first class having a population exceeding one hundred and fifty thousand inhabitants, the city council thereof shall

by a resolution passed by a majority of the members elected thereto, declare it to be essential to the interests of such city that a line of railway, to be named in said resolution, should be provided between termini designated therein, one of which shall be such city, it shall be lawful for a board of trustees, appointed as herein provided, and they are hereby authorized to borrow, as a fund for that purpose, not to exceed the sum of ten millions of dollars, and to issue bonds therefor in the name of said city, under the corporate seal thereof, bearing interest at a rate not to exceed seven and three-tenths per centum per annum, payable at such times and places, and in such sums as shall be deemed best by said board. Said bonds shall be signed by the president of said board, and attested by the city auditor, who shall keep a register of the same, and shall be secured by a mortgage on the line of railway and its net income, and by the pledge of the faith of the city, and a tax, which it shall be the duty of the council thereof annually to levy, sufficient with said net income to pay the interest and provide a sinking fund for the final redemption of said bonds; provided that no money shall be borrowed on bonds issued until after the question of providing the line of railway specified in the resolution shall be submitted to a vote of the qualified electors of said city, at a specified election, to be ordered by the city council thereof, of which not less than twenty days notice shall be given in the daily papers of the city; and further provided, that a majority of said electors voting at such election shall decide in favor of said line of railway. The returns of said election shall be made to the city clerk, and be by him laid before the city council, who shall declare the result by a resolution. The bonds issued under

the authority of this section shall not be disposed of for less than their par value.

SEC. 2. If a majority of the votes cast at said election shall be in favor of providing the line of railway, as specified in the first section, it shall be the duty of the solicitor forthwith to file a petition in the Superior Court of said city, or, if there be no Superior Court, then in the Court of Common Pleas, of the county in which said city is situate, praying that the judges thereof will appoint five trustees, to be called the trustees of ——— railway (the blank to be filled with the name given to the railway in the resolution), and it shall be the duty of said judges to make the appointment, and to enter the same on the minutes of the court. They shall enter into bond to the city in such sum as the court may direct, with one or more sufficient sureties, to be approved by the court, conditioned for the faithful discharge of their duties. The bond so taken shall be deposited with the treasurer of the corporation for safe keeping.

SEC. 3. The said trustees and their successors shall be the trustees of the said fund, and shall have the control and disbursement of the same. They shall expend said sum in procuring the right to construct, and in constructing a single or double track railway, with all the usual appendages, including a line of telegraph between the termini specified in the said resolution, and for the purposes aforesaid, shall have power and capacity to make contracts, appoint, employ, and pay officers and agents, and to acquire, hold, and possess all the necessary real and personal property and franchises either in this State or in any other State into which said line of railway may extend. They shall also have power to receive donations

of land, money, bonds, and other personal property, and to dispose of same in aid of said fund.

SEC. 4. The said trustees shall form a board and shall choose one of their number president, who shall also be the acting trustee, with such power as the board may, by resolution, from time to time confer upon him. A majority of said trustees shall constitute a quorum, and shall hold regular meetings for the transaction of business at their office in the city under whose action they are appointed, but they may adjourn from time to time to meet at any time and place they may think proper. They shall keep a record of their proceedings, and they shall cause to be kept a full and accurate account of their receipts and disbursements, and make a report of the same to the City Auditor annually, and whenever required by a resolution of the city council. No money shall be drawn from said fund but upon the order of said board, except their own compensation, which shall be paid out of the same upon the allowance of the court appointing them, and shall be proportioned according to their respective services.

That afterwards on the 4th day of June, in the year aforesaid, the city council of the city of Cincinnati, reciting in a preamble the powers conferred in the first section of the said Act, and that the said city of Cincinnati, in the State of Ohio, was a city of the first class, having a population exceeding one hundred and fifty thousand inhabitants, resolved in pursuance and by virtue of the powers in said Act given (a majority of all the members elected thereto concurring) as follows:

First. That the said city council hereby declares it to be essential to the interests of the said city of Cincin-

nati, that a line of railway, to be named "The Cincinnati Southern Railway," shall be provided between the said city of Cincinnati and the city of Chattanooga, in the State of Tennessee.

Secondly. That a special election be held on Saturday, the 26th day of June, 1869, at which election the question of providing the said line of railway shall be submitted to a vote of the qualified electors of the said city; and the city clerk is hereby directed to cause to be printed a sufficient number of two sets of ballots (not less than one hundred thousand of each set) for use at each voting place, upon one of which sets shall be printed: "*Special election to decide for or against providing a line of railway between Cincinnati, Ohio, and the city of Chattanooga, State of Tennessee.* FOR PROVIDING SAID LINE OF RAILWAY." And upon the other set shall be printed: "*Special election to decide for or against providing a line of railway between Cincinnati, Ohio, and the city of Chattanooga, State of Tennessee.* AGAINST PROVIDING SAID LINE OF RAILWAY."

Thirdly. That the Mayor of the said city of Cincinnati be, and he is hereby directed to issue his proclamation to the qualified voters of said city, giving notice of said special election, and of the time and places of holding the same, and that said proclamation be published in the daily newspapers of said city, at least twenty days before said election. Said election shall be held at the usual places of voting at municipal elections in each ward, and shall be conducted in the manner prescribed by law for holding municipal elections. The returns of said election shall be made to the city clerk, and shall by him be laid before the city council, who shall declare the result by a resolution.

That in pursuance and by virtue of said resolutions the Hon. John F. Torrence, Mayor of the said city of Cincinnati, did by his proclamation published in all the daily newspapers of said city for more than twenty days prior to the day of said special election, give notice to the qualified electors of said city that a special election to decide for or against providing the said line of railway would be held on Saturday, the 26th day of June, A. D. 1869, and that polls would be open at the usual places of voting at municipal elections in each ward, between the hours of six o'clock in the morning and six o'clock in the evening of said day.

That afterwards, to wit: on the 28th day of June, in the year 1869, the said mayor sent his message to the city council of the said city of Cincinnati, certifying under his hand and the corporate seal of the said city, that he had given notice of the time and place of holding the said special election, as above stated, and the city clerk of said city laid before the said city council, at a meeting thereof, duly convened on said last mentioned day, the returns of said election; whereby it appeared that at said special election there were cast fifteen thousand four hundred and thirty-five (15,435) ballots of the qualified electors of said city, *for* providing said line of railway, and fifteen hundred (1,500) ballots *against* providing said line of railway.

Whereupon the said city council declared by a resolution that the result of said special election was that a majority amounting to thirteen thousand nine hundred and thirty-five of the votes cast at said special election was in favor of providing said line of railway between the said city of Cincinnati, Ohio, and the said city of Chattanooga, in the State of Tennessee.

That thereafter the city of Cincinnati filed in the Superior Court of Cincinnati, in cause No. 24,749, in the said court on the 30th day of June, 1869, a petition reciting the facts set forth above, and praying for the appointment of five trustees, to be called the Trustees of the Cincinnati Southern Railway, with all the powers given in the above recited act, and that their appointment be entered on the minutes of the said court, as the act provides.

That on the said 30th day of June, 1869, the following order was made and entered upon the minutes of the said court:

In the matter of the application of the city of Cincinnati for the appointment of the trustees of the Cincinnati Southern Railway.

The petition of the city of Cincinnati, by J. Bryant Walker, city solicitor for said city, having been filed in this court, praying that the judges thereof would appoint five trustees, to be called the Trustees of the Cincinnati Southern Railway, with the powers given in the act of the General Assembly of the State of Ohio, passed on the 4th day of May, in the year 1869, entitled "An Act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants." And the court and the judges thereof being satisfied, and finding that all the statements made in the said petition are true in substance and in fact, hereby appoint *Richard M. Bishop, Edward A. Ferguson, Miles Greenwood, Philip Heidelberg* and *William Hooper*, to be trustees of the Cincinnati Southern Railway, with the powers given in the act aforesaid, and order that the said trustees severally enter into bond to the said city of Cincinnati,

in the sum of one hundred thousand dollars with four sureties each, to be approved by the court, conditioned for the faithful discharge of their duties. And it is also ordered that upon giving bond as aforesaid, the clerk of this court deliver a certified copy of this order to each of said trustees as the evidence of his appointment.

And afterwards, to-wit: on the 3d day of July, in the term and year last aforesaid, the following entry was made in said cause on the journal of said court, to-wit:

(Min. 518. Bonds Approved.)

This day came the trustees of the Cincinnati Southern Railway, who were heretofore appointed, and presented their said bonds with the following named persons:

1—As sureties for Richard M. Bishop, as trustee aforesaid, Carlos H. Gould, William S. Dickinson, James A. Frazer and Wm. Glenn.

2—As sureties for Edward A. Ferguson, as trustee aforesaid, Charles W. West, Anthony D. Bullock, Henry Lewis and John Schiff.

3—As sureties for Miles Greenwood as trustee aforesaid, Robert Mitchell, Lewis Worthington, William Woods, Joseph C. Butler and Peter Gibson.

4—As sureties for Philip Heidelbach as trustee aforesaid, Jacob Seasongood, Jacob Elsas, Abram Akerland and Samuel Thorner.

5—As sureties for William Hooper, as trustee aforesaid, Learner B. Harrison, Leverett G. E. Stone, David H. Taylor and Thomas R. Biggs.

And the court being satisfied that such sureties are sufficient, approve the said bonds with the sureties afore-

said, and order that the city solicitor receive and deposit said bonds with the treasurer of the said city of Cincinnati, as is provided by the statute.

Thereupon the said trustees appeared in open court and were duly sworn to discharge their duties as trustees as aforesaid.

And afterwards, to-wit: on the 8th day of July, A. D. 1869, there was filed in the office of the clerk of said court a certain receipt clothed in the words and figures following, to-wit:

(Receipt of City Treasurer for Bonds)

CITY OF CINCINNATI,

Treasurer's Office, July 6, 1869.

Received of J. Bryant Walker, city solicitor, the bonds of the following named trustees of the Southern Railway.

WM. HOOPER,
MILES GREENWOOD,
R. M. BISHOP,
P. HEIDELBACH,
E. A. FERGUSON.

Filed in the city treasurer's office, according to law.

ROBERT MOORE, *City Treasurer.*

That on the 6th day of July, 1869, they met and chose Miles Greenwood president, and appointed Henry H. Tatem secretary, and ordered that their office be kept at the rooms of the Board of Trade of Cincinnati, in Pike's Opera House building, and that their regular meeting be held on the first Tuesday of each month, at 3 P. M.

That since the last mentioned date they have procured the consent of the State of Tennessee to the construction and maintenance of the said line of railway, and to the

exercise of the powers vested in them as aforesaid in said State, and have made application for a like consent from the Commonwealth of Kentucky, in which latter State, however, no grant has yet been made.

That for the purpose of further enabling the trustees appointed under said act of May 4th, 1869, to carry into effect the purposes of such act, the General Assembly of the State of Ohio, on the 25th day of March, 1870, passed the following act:

AN ACT supplementary to the act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants, passed May 4, A. D. 1869.

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio*, That the city council of any city of the first class described in the act to which this is supplementary, may, after trustees have been appointed, as provided in said original act, advance to said trustees out of any fund of said city, such sum as may be necessary, not exceeding fifty thousand dollars, for carrying the object for which they are appointed into effect, and said sum shall be repaid out of the trust fund provided for in said original act, when raised.

SEC. 2. This act shall take effect on its passage.

That thereupon, upon the 2d day of April, 1870, the city council of the city of Cincinnati passed an ordinance advancing the sum of \$50,000 out of the interest fund, to be paid to the said trustees as a loan, to be repaid out of the proceeds of the first bonds sold.

That Charles H. Titus is the auditor of the city of Cincinnati, and that a portion of the funds so appropriated

are still unpaid, and that he will pay the same unless restrained by the court.

Plaintiff submits to the court that the statutes of the State of Ohio above recited, are unconstitutional and void, and that the advance of such money is a misapplication of the funds of the corporation and in contravention of the laws governing the same, and is not proper corporate use.

Wherefore plaintiff prays the court to enjoin the payment of said money so appropriated, and for such other relief as may be equitable and just.

J. BRYANT WALKER,

Solicitor.

STATE OF OHIO,)
Hamilton County. } ss.

J. Bryant Walker on oath says that the facts set forth in the above petition are true.

J. BRYANT WALKER.

Subscribed in my presence and sworn to before me by said affiant this 11th day of April, 1870.

[N. P. SEAL.]

J. W. WARRINGTON,

Notary Public.

(Præcipe.)

J. BRYANT WALKER, Solicitor of Cincinnati, and a taxpayer of said city,
Plaintiff,

*vs.**Superior Court*

CITY OF CINCINNATI, CHAS. H. TITUS, Auditor, and WM. HOOPER, MILES GREENWOOD, R. M. BISHOP, P. HEIDELBACH and E. A. FERGUSON, Trustees of the Cincinnati Southern Railway,
Defendants.

*of Cincinnati.**To Clerk:*

Issue summons to each of the above named defendants, and endorse on summons: For injunction and other relief.

WALKER & CONNER,

Solicitors.

Whereupon, on the 12th day of April, A. D. 1870, there was issued from the office of the clerk of said court a certain summons, directed to the sheriff of Hamilton county, clothed in the words and figures following, to-wit:

THE STATE OF OHIO,
Hamilton County,
City of Cincinnati,

Superior Court of Cincinnati.

(Summons.)

To the Sheriff of the County of Hamilton:

You are commanded to notify the city of Cincinnati, Chas. H. Titus, auditor, and Wm. Hooper, Miles Greenwood, R. M. Bishop, P. Heidelberg, and E. A. Ferguson,

trustees of the Cincinnati Southern Railway, defendants, that they have been sued by J. Bryant Walker, solicitor of the city of Cincinnati, and a taxpayer of said city, plaintiff, in the Superior Court of Cincinnati, and that unless they answer by the 14th day of May, A. D. 1870, the petition of the said plaintiffs against them, filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 25th day of April, A. D. 1870.

Witness my hand and the seal of said court at Cincinnati, this 12th day of April, one thousand eight hundred and seventy.

[SEAL.]

H. H. TINKER,

Clerk of the Superior Court of Cincinnati.

By EMIL HOFFMAN, *Deputy.*

Which said summons is endorsed as follows to-wit:

(Endorsed.)

Summons in action for injunction and other relief. To 25th day of April, 1870.

WALKER & CONNER,

Attorneys.

And afterward, to-wit: on the 25th day of April, A. D. 1870, came the said sheriff and duly returned the foregoing summons, with his return thereon endorsed, clothed in the words and figures following, to-wit:

(Return.)

1870. April 12. Served city of Cincinnati by delivering true copy to John F. Torrence, mayor, personally. Served Chas. H. Titus, auditor, with copy personally.

1870. April 13. Served Wm. Hooper, P. Heidelbach and E. A. Ferguson, each with copy personally. Served Miles Greenwood and R. M. Bishop, each, by leaving copy at his residence. Trustees of the Cincinnati Southern Railway.

D. WEBER, *Sheriff*.

By I. H. BIRD, *Deputy*.

And afterward, to-wit : on the 18th day of April, A. D. 1870, came the said defendants by their attorney, E. A. Ferguson, and filed in the office of the clerk of said court their certain demurrer, clothed in the words and figures following, to-wit.

J. BRYANT WALKER, Solicitor of the
City of Cincinnati and a Tax-
payer of said city,

Plaintiff,

against

*Superior Court of
Cincinnati.*

THE CITY OF CINCINNATI, CHARLES H.
TITUS, Auditor, WILLIAM HOOPER,
MILES GREENWOOD, R. M. BISHOP,
P. HEIDELBACH and E. A. FERGUSON, Trustees of the Cincinnati
Southern Railway,

No. 26,007.

Defendants.

(Demurrer of defendants.)

The defendants above named come and demur to the petition of the plaintiff and for cause assign :

That the facts stated in said petition do not constitute a cause of action against them or either of them.

E. A. FERGUSON,

Attorney for defendants.

And thereupon, to-wit: on the 18th day of April, in the term of April, A. D. 1870, of said court, the following order of reservation was made and entered in said action, to-wit:

J. BRYANT WALKER, City Solicitor, and a taxpayer of said city of Cincinnati.	} Superior Court of Cincinnati. No. 26,007.
<i>against</i>	
THE CITY OF CINCINNATI AND OTHERS.	

(Entry of reservation. Min: 87.)

It is ordered that the questions of law arising upon the demurrer of the defendants to the plaintiff's petition be reserved and adjourned for the decision of the court in General Term.

And the cause was removed to the General Term of the Superior Court of Cincinnati upon the above recited order of reservation.

GENERAL TERM OF JANUARY, A. D. 1871.

Pleas at the city of Cincinnati, in the county of Hamilton, State of Ohio, in the General Term of January, anno domini one thousand eight hundred and seventy-one, of the Superior Court of Cincinnati, held by the Honorables Bel-lamy Storer, Alphonso Taft and M. B. Hagans, Judges of the said court, sitting in room No. 3, in the court house, in the city of Cincinnati, county and State aforesaid, the Hon. M. B. Hagans presiding.

And now, to-wit: on the 4th day of January, A. D. 1871, in the term and year last aforesaid, the following entry was made on the journal of said court, to-wit:

J. BRYANT WALKER, Solicitor of the city of Cincinnati, and a Tax- payer of said city,	} Superior Court of Cincinnati.
<i>Plaintiff,</i>	
<i>Against</i>	
THE CITY OF CINCINNATI, CHAS. H. TITUS, Auditor, and W. M. HOOPER,	} No. 26,007.
MILES GREENWOOD, R. M. BISHOP,	
P. HEIDELBACH, and E. A. FERGUSON,	} General Term.
Trustees of the Cincinnati Southern Railway, <i>Defendants.</i>	
	} No. 1,508.

[Judgment entry: Min. 2.]

This cause came on to be heard upon the petition, and the demurrer of the defendants thereto, upon consideration whereof the court find that said demurrer is well taken, and sustain the same. It is, therefore, ordered and adjudged that the plaintiff's petition be dismissed. and that the defendant's recover their costs herein to be taxed.

OPINION OF THE COURT.

SUPERIOR COURT OF CINCINNATI.

In General Term, January 4, 1871.

J. BRYANT WALKER, Solicitor of the city of Cincinnati
and a Taxpayer of said City,
Plaintiff.

VERSUS

THE CITY OF CINCINNATI, CHAS. H. TITUS, Auditor, and
WILLIAM HOOPER, MILES GREENWOOD, RICHARD M.
BISHOP, PHILIP HEIDELBACH and E. A. FERGUSON, Trus-
tees of the Southern Railway,
Defendants.

OPINION OF THE COURT.

TAFT, J :—This suit is brought for an injunction against the city and the trustees of the Cincinnati Southern Railway. The petition recites the act of the Legislature, passed May 4, 1869, to authorize the appointment of trustees and the construction of the road, and the issuing of bonds of the city to the amount of ten million dollars for that purpose; alleges the appointment of the trustees under the act, and recites the proceedings of this court, as recorded, in relation to said appointment, stating that the trustees have organized and obtained an office; that they have procured the consent of the Legis-

lature of Tennessee to build the road through that State, and applied to the Legislature of Kentucky for a like consent; that the Ohio Legislature have passed another act, of March 25, 1870, supplementary to that of May 4, 1869, authorizing the city to advance fifty thousand dollars to the trustees for the purpose of carrying into effect the object of their appointment, to be repaid out of the bonds to be issued under the original act; that the Auditor has appropriated a portion of said fund, and there remains a part unappropriated; that the acts above mentioned are unconstitutional and void, and the advance of this money a misapplication of the public funds and not a proper corporate use, and asking an injunction.

The defendants have demurred.

THE QUESTION TO BE DETERMINED.

We have thus presented for our consideration the constitutionality of those acts by which the city of Cincinnati has been authorized to construct the Southern Railroad, and to expend money preliminary to its construction by surveys and other preparations for the work.

IMPORTANCE OF THE RAILWAY AS A CINCINNATI PROJECT.

That the Legislature regarded the road as a matter of public concern to the city, and a proper work to be carried through by taxation on city property, is shown by the enactment of the law authorizing the issue of the bonds to build it, and the levy of the tax to pay the interest thereon; and that the people of Cincinnati entertain a like opinion is also evinced by the popular

vote, as well as by the proceedings of the legislative body of the city.

The importance of this project, as a Cincinnati project, and its public character as a subject of taxation, are questions, therefore, which have already been decided by those most deeply concerned, and by those who have been especially and primarily intrusted with their decision; and it would require a clear case against the opinions of the city and State Legislatures, thus unequivocally expressed, to justify the court in contradicting them in its finding on this point.

THE CONSTRUCTION OF A RAILROAD WITHIN THE SCOPE OF MUNICIPAL TAXATION.

It has been held by our Supreme Court that the construction of a railroad might be a proper subject for the taxation of a municipal corporation, independent of, and prior to, the restriction in our present Constitution, and the issue of bonds and the levy of taxes to pay the interest on them, was enforced by a writ of mandamus since the Constitution of 1851 was adopted, the act under which the subscription was made having been passed prior to the change in the Constitution. If the construction of a railroad had been a purpose beyond the scope of municipal taxation, the restriction in the new Constitution upon the power of a city to lend its credit or otherwise assist a private corporation in its construction, would not have been required.

The form in which such aid was granted, usually, was by lending bonds or money to the corporation which was constructing it, or by subscribing to its capital stock. The railroad company was a private corporation, and

operated its road for its own profit, but the public derived large incidental advantages from its use. In this State, it has been several times decided, that a municipal corporation had an interest in such a work to justify a municipal tax to aid in carrying it through. (2 O. S. 607 647, 649; 14 O. S. 472, 479.)

If, then, the restriction in the present Constitution against the aiding or subscribing to the stock of railroad companies by towns, cities, and counties had been omitted, the Legislature might have authorized such aid to railroad corporations. (*Cass vs. Dillon*, 2 O. S. 608; *Cincinnati, Wilmington & Zanesville Railroad Company vs Commissioners of Clinton County*, 1 O. S. 77; *Fosdick vs. Village of Perrysburg*, 14 O. S. 473.)

THE STATE NOR THE CITY CAN NOT LOAN TO A PRIVATE CORPORATION.

It evidently follows, from these repeated adjudications, that, if the Legislature, under the old Constitution, instead of authorizing municipal corporations to aid private corporations in constructing railroads, by the issue of bonds, or subscription to the capital stock of such companies, had authorized a city itself to construct a railroad deemed of public importance to such city, and indispensable to its welfare, it would have been constitutional. The same reason would have justified both methods of securing the same object.

It would have been at least as constitutional to have authorized the city to build the road, as to have authorized it to loan money to a private corporation, in order that it might build it. By the latter plan, the accomplishment of a public purpose through the application of the public

funds, was left dependent upon the good faith and discretion of a private corporation, whose legitimate object was profit to its individual stockholders. This has long been regarded as objectionable.

The restriction in the present Constitution which is supposed to prohibit the act authorizing the city of Cincinnati to build its Southern Railroad, is contained in the sixth section of the eighth article, which provides "that the General Assembly shall never authorize any county, city, town, or township, by a vote of the citizens or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever, or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association."

This restriction plainly cuts off the power to authorize cities to loan their credit to railroad companies or take stock in them. The power to authorize the city itself to construct such an improvement, however, is not mentioned.

By the fourth section of the same article, it is provided, that "the credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation whatever, nor shall the State ever hereafter become a joint owner or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever."

Prior to the adoption of the Constitution, "it was competent for the Legislature, under the Constitution of 1802, to construct works of improvement on behalf of the State," as it did the Ohio canal, "or to aid in their construction, by subscribing to the capital stock of a corporation for that purpose," as it did in the case of the

Cincinnati and Whitewater Canal Company, "and to levy taxes to raise the means, or by an exercise of the same power to authorize a county or township to subscribe to a work of that character running through or into such county or township, and to levy a tax to pay the subscription," as was held in the case of *C. W. & Z. R. R. Company vs. Clinton County*, 1 O. S. R. R., 77, and *S. & I. R. R. Company vs. North Township*, 1 O. S. R., 105; also several other cases, as 1 O. S. R., 153; 2 O. S. R., 603; 7 O. S. R., 327; 8 O. S. R., 394; 14 O. S. R., 482, 479, and still in other cases, which need not be cited, but which leave no doubt on this question, in the State of Ohio.

A MUNICIPAL CORPORATION CAN BE AUTHORIZED TO EXTEND ITS FUNDS
ON NECESSARY PUBLIC IMPROVEMENTS.

Nothing can be clearer than that this restriction upon the State, is limited to its loaning its credit to companies or corporations, and to its "becoming a stockholder in any company." It can not be contended that the provision intended to prohibit the State itself from accomplishing directly, "any purpose whatever." The extent of the restriction is that the State shall neither lend its funds to, nor become a member of, a private corporation for any purpose whatever. Its power to make necessary public improvements without the agency of corporations remains as it was before; and what it was before, we have seen, was not doubtful.

We feel bound to give a like construction to the sixth section, which applies to cities.

They can not be authorized now, as formerly, to lend their funds or their credit to, or to become members of

trading corporations, for any purpose whatever. But they can be authorized to expend their own funds in making necessary public improvements, in the same manner and to the same extent, as before the adoption of our present Constitution.

CONSTITUTIONALITY OF THE ACTS.

In our opinion it follows logically, and unavoidably, from the decisions of our own State, and indeed from the current of authorities in other States, that these acts are constitutional. Upon a careful examination of our present Constitution and a comparison of it with the Constitution of 1802, and the adjudications of our courts under it, the case appears to our minds clear of doubt.

If, however, the case were doubtful, we should not be justified in pronouncing the acts of the Legislature void. The presumption must always be in favor of the validity of the laws enacted by the State Legislature, if the contrary is not clearly demonstrated.

IN A DOUBTFUL CASE JUDICIAL INTERFERENCE NOT WARRANTED.

The incompatibility must be clear, to warrant the setting aside of an act of the Legislature duly passed. *C. W. and Z. R. R. vs. Commissioners of Clinton county*, 1 O. S. R. 823; *Lehman vs. McBride*, 15 O. S. R. 591; 10 O. R. 235; 11 O. S. R. 641.

In *Lehman vs. McBride*, our Supreme Court declared "that while it was the right and the duty of judicial tribunals to give full force and effect to the organic law of the State, and, therefore, to declare null and void any attempted acts of legislation which contravene the limitations imposed by the Constitution upon Legislative power,

yet such judicial interference can not be justified in doubtful cases."

Such is the uniform current of judicial authority. Mr. Cooley, in his work on Constitutional Limitations, lays down the same rule, pp. 87 and 88.

It was said in the case of *Sharpless vs. Philadelphia*, 21 Penn. St. R. 164, which arose from an attempt to resist a tax levied to pay a railroad subscription, that an act resting in the discretion of the Legislature will be pronounced void, "only when it violates the Constitution, palpably, plainly, and in such a manner as to leave no doubt or hesitation in our minds.

And in *Cheney vs. Hooser*, 9 B. Monroe, 345, the court declared that a "tax must be considered valid, unless it be for a purpose in which the community taxed has palpably no interest."

We are not at liberty to use our judgment as to what is judicious for the State to enact, or for the people of the city to vote. Can we assume judicially that the people of this city have no interest in the Southern Railroad, contrary to the solemn act of the Legislature, whose duty it was to pass on this very question, and contrary to the vote of the people? Is this a case in which we can hold that the State Legislature has clearly gone beyond its authority? We think not.

THE OBJECTION AS TO THE SOUTHERN RAILWAY EXTENDING BEYOND
THE STATE.

The objection has been suggested that the Southern Railroad is to extend a great distance from Cincinnati, and beyond the limits of the State of Ohio. The objection is plausible. But power has often been granted to cities

to operate beyond their corporate limits in order to secure something essential to their welfare. The city of New York was authorized to bring the water of the Croton river, a distance of forty miles, at a cost of \$11,000,000; nor can we suppose that the exercise of such authority for such a purpose would have been prevented, if the Croton aqueduct had crossed the line of a State.

Cincinnati has, in several instances, exercised authority granted by the Legislature to make costly improvements beyond the corporate limits. The House of Refuge was built under such a law. The Infirmary was beyond its limits, also the Work-house.

The city was authorized to expend funds in the purchase of stone coal in the mines which are not located within the corporation, but in different States, "and in all the necessary agencies for the procuring, transporting, delivery of said coal," to the city, for the purpose of protecting the citizens against exorbitant prices in the times of scarcity.

Cincinnati, under a law of the Legislature, loaned to the Ohio & Mississippi Railroad Company, whose improvement lay principally beyond and outside of the State of Ohio, a large sum of money, and afterwards exchanged its bonds for the stock of the company.

Under a like law of the Legislature, the city of Cincinnati has already invested \$150,000 in the railroad from Cincinnati to Lexington, in the same general direction as that contemplated for the Southern Railroad, and altogether outside the State of Ohio.

If there were a lake of good water on the south side of the Ohio river, and if the Legislature and the city itself were of the opinion that the welfare of the city

required that an aqueduct should be constructed by the city, to draw pure and wholesome water from that source, and the proper legislation were had in Ohio and Kentucky, it can not be doubted that the city could raise the money by taxes under the authority of such legislation, to do the work.

The fact that it is expected that the Southern Railroad will extend beyond the State line a much longer distance, or that it is not water which is to be drawn by it to Cincinnati, does not change the principle. We do not say that this principle could not be so abused as to require the interposition of the judiciary to restrain it. But we have no evidence on which we can so find in the present case.

REFERENCE TO CASES CITED.

The opinion of Judge Cooley in the case of the *People vs. Salem*, in the Supreme Court of Michigan, is not inconsistent with the decision we now make. That opinion decided that the levy of a tax to raise money to give to a railroad company, either by loan, or by subscription, to the capital stock, to help construct its road, is not a proper use for the taxing power, because it is giving the public fund to a private corporation. 9 Am. Law Reg. 487.

It has no application to a case where the municipal corporation itself constructs a public work essential to its own welfare, as the learned Judge has himself declared in an opinion published since that decision, in which he says "that the power of cities in Ohio to construct works of internal improvement, with Legislative permission, has been settled by judicial decision," and "that there is nothing in the present Constitution of Ohio designed to

prevent the local authorities from levying taxes for the construction of railroads where their own agencies are employed for the work."

Indeed, the opinion coincides entirely with that which we have expressed. Nor is the case of *Whiting vs. The Sheboygan Railroad Company* in the Supreme Court of Wisconsin, as published in 9 Am. Law Reg. 156, in conflict with our opinion as now announced.

In that case, Dixon, Judge, giving the opinion of the court, held that a municipal corporation could not, under the constitution of that State, loan its funds to a railroad corporation, although he expressed the opinion that it might subscribe to the capital stock of the company, because it became to that extent owner of the improvement, and such ownership made it public property.

It is not necessary that we should consider any such distinction. But we may add that we have found no authority, and have been referred to none, inconsistent with the principles we have expressed.

CONCLUSION.

Upon the whole case, we hold that "the act relating to cities of the first class, having a population exceeding one hundred and fifty thousand inhabitants," passed May 4, 1869, and the act of March 25, 1870, supplementary thereto, both of which are recited in the petition, are constitutional and valid—in which opinion we are unanimous.

STORER, J.—It might be supposed in a case of so much importance, that each of the Judges would announce an opinion; but Judge Taft had so exhausted the subject, and given the individual views of his associates so fully,

combining them with his own, that it is scarcely necessary they should do more than to subscribe to his opinion.

There was one idea, however, it might be proper to refer to here, by the way of illustration, as it was suggested when the case was before the judges in the consultation room. Suppose it was necessary to build a bridge across the Ohio river at this point, could not the Legislature authorize the city of Cincinnati to build it, provided the State of Kentucky would permit the abutments on that side to be put up? It did not appear to the court there could be any doubt on that point.

HAGANS, P., J.—The present case has been under advisement with the General Term, since the month of October; the whole subject has been most carefully considered, in view of the magnitude and importance of the questions involved, as well as the discussion of them that has been had, not only before the court but elsewhere. The result reached is entirely satisfactory to each member of the court.

DECISION

—OF—

SUPREME COURT OF OHIO.

In the Supreme Court of Ohio.

December Term, 1871.

HON. JOSIAH SCOTT, Chief Justice, and HON. JOHN WELSH,
HON. WILLIAM WHITE, HON. LUTHER DAY, and HON.
GEORGE MCILVAINE, Judges.

J. BRYANT WALKER, Solicitor of the City of Cincinnati,
and a taxpayer of said City,
Plaintiff.

VERSUS

THE CITY OF CINCINNATI CHAS. H. TITUS, Auditor, and
WILLIAM HOOPER, MILES GREENWOOD, RICHARD M.
BISHOP, PHILIP HEDELBACH and E. A. FERGUSON, Trus-
tees of the Southern Railway,
Defendants.

ON ERROR TO THE SUPERIOR COURT OF
CINCINNATI.

1. Courts can not nullify an act of legislation on the vague ground that they think it opposed to a general latent spirit supposed to pervade or underlie the Constitution, but which neither its terms nor its implications clearly disclose.

2. It is well settled in this State by repeated adjudication, that, independent of constitutional prohibitions, it is within the legitimate scope of legislative power to authorize a city to aid in the construction of railroads or other public improvements, in which such city has a special interest, and to impose taxes upon its citizens for that purpose. It follows that it is equally competent for the Legislature to authorize the entire construction of such improvements by a city having a special interest therein, and to empower the local authorities to provide means therefor by the taxation of its citizens.

3. When the authority given is to construct a line of railroad having one of its termini in such city, it does not affect the question of power that the road when constructed will lie mainly outside of the State of Ohio. It is the corporate interest of the municipality which determines her right of taxation, and not the location of the road, which may well be constructed with the consent of the State into or through which it may pass.

4. The authority and duty to prevent an abuse of the powers of taxation and assessment by municipal corporations is intrusted by the Constitution to the General Assembly and not to the courts of the State; and the power of the Legislature to authorize local taxation can not be judicially denied on the ground that the purpose for which it is exercised is not local, unless the absence of all special local interest is clearly apparent.

5. The act of the General Assembly of this State, passed March 4, 1869, entitled "An act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants," is not in conflict with the provisions of the Constitution in any of the following respects: The conferring of authority on the Judges of the Superior Court of Cincinnati, to appoint trustees to carry out the purposes of the act, is not the exercise of an appointing power by the General Assembly, which article 2, section 27, of the Constitution forbids; it is not the creation of a new office, but the annexing of a new duty to an existing office. For the same reason it is not in conflict with article 4, section 14, which prohibits Judges of the Supreme Court, and the Court of Common Pleas, from holding any other office of profit or trust under the authority of this State or the United States. The duty imposed upon the court by this act is of a judicial character.

Nor does the act conflict with article 2, section 20, of the Constitution, which requires the General Assembly, in cases not provided for in the

Constitution, to fix the term of office and compensation of all officers. The trustees, for whose appointment it provides, are not public officers within the meaning of this provision; and finally the act violates neither the express, nor clearly implied, prohibitions of article 8, section 6, which declares: "The General Assembly shall never authorize any county, city, town, or township, by vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever, or to raise money, or loan its credit to, or in aid of, any such company, corporation, or association."

MESSRS. STALLO & KITTREDGE, and SCRIBNER & HURD, for the *plaintiff*.

MESSRS. STANBERY, CALDWELL & MATTHEWS, for the *defendants*.

OPINION OF THE COURT.

SCOTT, Ch. J.—The question presented by this case is, as to the constitutionality and validity of the act of the General Assembly of this State, passed March 4th, 1862, entitled "An act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants."

The general scope and purpose of the act is to authorize any such city to construct a line of railroad leading therefrom to any other terminus in this State or in any other State, through the agency of a board of trustees consisting of five persons, to be appointed by the Superior Court of such city; or, if there be no Superior Court, then by the Court of Common Pleas of the county in which such city is situated. The enterprise can not, however, be undertaken until a majority of the city council shall, by resolution, have declared such line of railway

to be essential to the interest of the city, nor until it shall have received the sanction of a majority vote of the electors of the city, at a special election, to be ordered by the city council, after twenty days' public notice.

For the accomplishment of this purpose, the board of trustees is authorized to borrow a sum not exceeding ten millions of dollars, and to issue bonds therefor in the name of the city, which shall be secured by a mortgage on the line of railway and its net income, and by the pledge of the faith of the city, and a tax to be annually levied by the council, sufficient with such net income to pay the interest and provide a sinking fund for the final redemption of the bonds.

In pursuance of the authority which this act purports to give, the city council of Cincinnati has resolved that it is essential to the interests of that city that a line of railway, to be named the "Cincinnati Southern Railway," shall be provided between the said city of Cincinnati and the city of Chattanooga, in the State of Tennessee; and this action of the council has been endorsed and approved by a vote of more than ten to one of the electors of the city, at an election duly ordered and held pursuant to the requirements of the act.

But fifteen hundred of the electors of the city voted against the proposed project; and the grave question here presented on behalf of these unwilling electors and tax payers is, whether it is within the power of the State Legislature to authorize the taxation of their property by the municipality for the purpose of constructing such a line of railway by the means and in the manner prescribed in the act. The consequences which may reasonably be expected to result from the exercise by municipal

corporations of powers such as this act purports to confer, both in respect to public and private interests, are so monstrous as to make it difficult to overestimate the importance of the question, and to demand, at our hands, the most careful investigation and deliberate consideration. This is the first instance in the history of the State, so far as we are aware, in which the General Assembly has undertaken to authorize municipalities to embark in the business of constructing railroads on their own sole account, as local improvements. The railway contemplated in this instance is several hundred miles in length, extending into other States.

The sum authorized to be expended in its construction is a large one; and should it prove inadequate for the completion of the road, we may reasonably expect it to be increased by subsequent legislation. These considerations, and the apparent abuse of discretion involved in declaring such a work to be so far *local* in its character as to justify its construction by a single city, at the sole expense of its citizens, all give a high degree of interest to the question. But we must bear in mind that the question is one of legislative *power*, and not of the wisdom, or even of the justice, of the manner in which that power, if it exists, has been exercised. Had we jurisdiction to pass upon the latter question, we should probably have no hesitation in declaring the act under review to be an abuse of the taxing power. Let us then first inquire under what conditions it becomes competent for the judiciary to declare an attempted act of legislation, formally enacted by the General Assembly, to be invalid by reason of unconstitutionality. Courts cannot, in our judgment, nullify an act of legislation on the vague

ground that they think it opposed to a general "latent spirit" supposed to pervade or underlie the Constitution, but which neither its terms nor its implications clearly disclose in any of its parts. To do so would be to arrogate the power of making the Constitution what the court may think it ought to be, instead of simply declaring what it is. The exercise of such a power would make the Court sovereign over both constitution and people, and convert their government into a judicial despotism. Whilst we declare that legislative power can only be exercised within the limits prescribed by the Constitution, we are equally bound to keep within the sphere allotted to us by the same instrument. On this subject we can not do better than to adopt what is so well said by Judge Cooley in his treatise on "Constitutional Limitations," pp. 128, 129, when, in speaking of limitations upon legislative authority, he says:

"Some of these are prescribed by constitutions, but others spring from the very nature of free government. *The latter must depend for their enforcement upon legislative wisdom, discretion and conscience.* The Legislature is to make laws for the public good, and not for the benefit of individuals. It has control of the public moneys, and should provide for disbursing them for public purposes only. Taxes should only be levied for those purposes which properly constitute a public burden. But what is for the public good, and what are public purposes, and what does properly constitute a public burden, *are questions which the Legislature must decide upon its own judgment, and in respect to which it is vested with a large discretion, which can not be controlled by the courts, except, perhaps,*

where its action is clearly evasive, and where, under pretense of a lawful authority, it has assumed to exercise one that is unlawful. Where the power which is exercised is legislative in its character, *the courts can enforce only those limitations which the constitution imposes, and not those implied restrictions, which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism, and sense of justice of their representatives.*"

And he adds on page 171 :

"Nor are the courts at liberty to declare an act void, because, in their opinion, it is opposed to a *spirit* supposed to pervade the constitution, but not expressed in words." Citing *People v. Fisher*, 24 Wend., 220; *Cochran v. Van Surlay*, 20 Wend., 381; *People v. Gallagher*, 4th Mich, 244; *Bensen v. Mayor of Albany*, 24th Barb, 252; *Grant v. Courter*, 24 Barb. 232; *Wynshamer v. People*, 13 N. Y., 391.

We do not understand it to be claimed that the act in question is an assumption of any of the powers specially delegated to the general government by the Constitution of the United States; nor that it is an encroachment upon the functions and powers conferred by the State constitution on other departments of the government, and, therefore, impliedly withheld from the General Assembly. The only questions, therefore, with which we have to deal are: First, whether the act is within the general grant of legislative power which the Constitution declares to be vested in the General Assembly; and second, does it contravene any of the limitations upon the exercise of legislative power, which are either expressed or clearly implied in any of the provisions of

that instrument? And before we can answer the former question in the negative, or the latter in the affirmative, our convictions must be clear and free from doubt. *Lehman v. McBride*, 15 O. St., 291; *C. W. & Z. R. R. Co. v. Commissioners Clinton Co.*, 1 O. St., 77, and authorities there cited. Let us, then, consider, first, whether this act is within the general scope of legislative power, independent of special constitutional prohibitions. That it is within the legitimate scope of legislative power to authorize a municipality of the State to aid in the construction of a public improvement, such as a railroad, by becoming a stockholder in a corporation created for that purpose, and to levy taxes to pay the subscription, must be regarded as fully settled in this State by repeated adjudication. In the case of *C. W. & Z. R. R. Co. v. Com. of Clinton County*, 1st O. St., 77, the subject was very fully considered, and it was held that, as the State may itself construct roads, canals, and other descriptions of internal improvement, so it may employ any lawful means and agencies for that purpose, among which are private companies incorporated for the construction of such improvements. And it was said that, for much stronger reasons, counties might be authorized to construct works of a similar kind, of a local character, having a special relation to their business and interests.

And as the State might construct or authorize the counties to construct these works entire, or create corporations to do it entire, it was held that, as a question of power, each might be authorized to do a part. The validity of subscriptions to the stock of railroad corporations, made by counties, cities, towns, and townships of

the State, under special legislative authority, has been drawn in question in many cases which have since come before this court, and in none of them has the authority of the Legislature to grant such power of subscription been doubted. 1 O. St. 105; Id. 153; 2 O. St. 607; Id. 647; 6 O. St. 280; 7 O. St. 327; 8 O. St. 394; Id. 564; 11 O. St. 183; 12 O. St. 596; Id. 624; 14 O. St. 260; Id. 472; Id. 569; and the cases in which such legislative authority has been upheld by the courts of last resort in other States are too numerous even for reference. A list of more than fifty such cases may be found in Judge Cooley's treatise before referred to, p. 119, note 4.

• If we even admit that all these decisions have been unwise, yet it is clearly too late to overrule them in this State, were the question a new one, and properly determinable by the judgment of a court, we should, perhaps, concur in opinion with Judge Redfield, that subscription for railway stock, by cities and towns do not come appropriately within the range of municipal powers and duties. Yet he is constrained to add that "the right of authority is all in our direction, and it is now too late to bring the matter into serious debate," 2 Redf. on Railway, 398, 399, note, and if in the absence of constitutional prohibitions, a municipal corporation may be authorized to aid by stock subscriptions in the construction of a railway which has a special relation to its business and interests; upon what principal shall we deny that it can be authorized to construct it entirely at its own expense, when its relation is such as to render it essential to the business interests of the municipality? And upon the question of fact, whether a particular road is thus essential to the interests of the city, this court in

the case of the C. W. & Z. R. R. already referred to quote approvingly from the case of *Goodin vs. Crump & Leigh*, R. 120, in which it was said: "If then the test of the corporate character of the act is the probable benefit of it to the community within the corporation, who is the proper judge whether a proposed measure is likely to conduce to the public interest of the city? Is it this court whose avocations little fit it for such inquiries? Or is it the mass of the people themselves—the majority of the corporation acting (as they must do if they act at all) under the sanction of the legislative body? The latter, assuredly."

And in *Sharpless vs. Mayor of Philadelphia*, 21 Penn. St. R. 147, it was said by C. J. Black, "if the Legislature may create a debt, and lay taxes on the whole people to pay such subscriptions, may they not with more justice, and greater propriety, and with as clear a constitutional right, allow a particular portion of the people to tax themselves to promote in a similar manner a public work in which they have a special interest? I think this question can not be answered in the negative." I can not conceive of a reason for doubting that what the State may do in aid of a work of general utility, may be done by a county or a city for similar work, which is especially useful to such county or city, provided the State refuses to do it herself, and permit it to be done by the local authorities. The question in that case was upon the validity of subscriptions of stock made by the city of Philadelphia in aid of two railroads. One of these was the Hempfield road which had its Eastern terminus at Greensbury, three hundred and forty-six miles west of Philadelphia. Both subscriptions were sustained, and the court

said : "It is the *interest* of the city which determines the right to tax her people. That interest does not necessarily depend on the mere location of the road." . . . But it is not our business to determine what amount of interest Philadelphia has in either of these improvements. That has been settled by her own officers, and by the Legislature. For us it is enough to know that the city may have a public interest in them, and that there is not a palpable and clear absence of all possible interest perceptible by every mind at the first flush. All beyond that is a question of expediency not of laws, much less of constitutional law, "By the act under consideration no railroads are authorized to be constructed, except such as have one of their termini in the city which constructs them, and that a city has no peculiar corporate interest in such channels of commerce as lead directly into it, is a proposition which, to say the least, is very far from being clearly true ; and as the public or corporate interest in an improvement rather than its particular location, determines the question as to the right of taxation for its construction, the fact that the road contemplated in the present case will lie mainly outside of this State, can make no difference. The right of eminent domain can not be exercised, nor the road constructed in or through other States without their permission and authority, and the active question contemplates nothing of the kind. But when such consent is given, we suppose the particular direction given to the road can have no bearing on the question of corporate power to construct it. It is also to be borne in mind that this is not a case in which the Legislature has determined a particular public improvement to be of a local character, and has imposed the bur-

den of its construction on an unwilling municipality. But it is the case of an authority given to a city to exercise its powers of taxation only for the construction of an improvement which the local authority have declared to be essential to the interest of the city, and even that can not be done till a majority of its people have sanctioned the measure by their deliberate votes.

The towns and cities of the State are not the creations of the Constitution.

It recognizes these municipalities as existing organizations, properly invested by immemorial usage, with powers of assessment and taxation for local purposes of a public character, but which were nevertheless subject to control and regulation by the State, and that these powers might be abused unless properly restricted. The Constitution itself provides where the power of preventing such abuse shall be vested. It declares in article 13, section 6, that the "General Assembly shall provide for the organization of cities and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such powers."

It is very clear that this constitutional mandate can not be enforced according to judicial discretion and judgment. In the very nature of the case, the power which is to impose restrictions, so as to prevent abuse, must determine what is an abuse, and what restrictions are necessary and proper. As is said by the learned author from whose treatise we have before quoted: "The moment a court ventures to substitute its own judgment for that of the Legislature, in any case where the Constitution has vested the Legislature with power over the subject,

that moment it enters upon a field where it is impossible to set limits to its authority, and where its discretion alone will measure the extent of its interference. The rule of law upon this subject appears to be, that except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case. The courts are not the guardians of the rights of the people of the State, except as those rights are secured by some constitutional provision which comes within the judicial cognizance. The protection against unwise or oppressive legislation within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil; but courts can not assume their rights." Cooley's Const. Lim., 167, 168.

We do not mean to say that every legislative enactment is necessarily valid unless it conflict with some express provision of the Constitution. Undoubtedly the General Assembly can not divest A. of his title to property and give it to B. They can not exercise judicial functions. They can impose taxes only for a public purpose; for it is of the essence of a tax that it be for a *public use*. Nor can they, by way of taxation, impose a burden upon a portion of the State only, for a purpose in which that portion of the State has no possible peculiar local interest. But to justify the interference of a court upon any of these grounds, the case must be brought clearly, and beyond doubt, within the category claimed; and such we are persuaded is not the case in respect to the act in question.

We have been referred to recent adjudications in several States, which are supposed to sustain the claim, that taxation can not be authorized for the construction of a railroad in cases like the present. In the case of *Whiting vs. Sheboygan Railway Co.*, 9 American Law Reg. 156, it was held that "a statute levying a tax for the sole purpose of making a direct gift of the money raised to a mere private railway, in which the State or the taxpayers have no ownership, is unconstitutional."

The case from Michigan, of *The People ex rel, The Detroit & Howell R. R. Co. vs. Township of Salem*, proceeds upon the same grounds. But, in the case now before us, the road is the property of the taxpayers, who furnish the means to build it. The recent decisions in Iowa are in conflict with the former uniform line of decisions on the subject in the same State, and in all the cases referred to in either of those States, the reasoning upon which the decisions rest, is in conflict with what we can not but regard as the settled law of this State.

We are brought to the conclusion that there is nothing in the general purport and main object of this act, which places it outside of the sphere of legitimate legislative power. We proceed to consider whether it is in conflict with any of the express limitations imposed by the Constitution. It is claimed that the General Assembly, in the act in question, by authorizing the Judges of the Superior Court to appoint trustees of the contemplated railway, have exercised an appointing power which is forbidden by the 27th section of the 2d article of the Constitution. The argument is, that the trustees whom the act authorizes the court to appoint, are *public officers*; that their appointment is not the exercise of a judicial

function, or of any power that can be conferred on the judges of the court *as such*; and that the conferring of this power of appointment is the creation of a new and independent office, which can not be filled by the appointment of the Legislature, whether the appointment be designated by name or by reference to another office which he holds. In the same connection, it is claimed that this power of appointment is conferred on the Judges of the Superior Court in violation of art. 4, sec. 14, of the Constitution, which prohibits the Judges of the Supreme Court and the Court of Common Pleas from holding any other office of profit or trust under the authority of this State or the United States; and it is further argued that the act is in conflict with art. 2, sec. 20, of the Constitution, because it does not fix the term of office and compensation of the trustees. Are any of these positions clearly well taken?

We shall first enquire whether the power of appointment conferred by this act on the Judges of the Superior Court involves the exercise of an appointing power by the General Assembly, were the judges thereby appointed to a public office? In support of the affirmative of this question, we are referred to the decision of this court in the case of the State on relation of the *Attorney-General vs. Kennon, et al.*, 7 O. St. R. 546, in that case it was held that the selection and designation, by name of the defendants, by the General Assembly, to exercise continuously and as a part of the regular and permanent administration of the government, important public powers, trusts, and duties, is an appointment to office. But we think the present case can not be brought within the principle of that decision. In this case, there is no

designation of individuals by name to exercise any public functions whatever. It is clearly the case of an additional power or duty annexed to existing offices, and not the creation of a new office. Upon the filing of a petition by the city solicitor in the Superior Court, praying for the appointment of trustees, it is made the duty of the judges of that court to make such appointment, and to enter the same on the minutes of their court. The power of appointment and of subsequent removal for unfaithfulness, can be exercised only by the *court, as such*, and all power of control in the premises on the part of the judges ceases with the termination of their judicial offices. It is true that the act confers a new power on the Judges of the Superior Court; but, as was said by Judge Swan, in his concurring opinion in the case referred to, "if adding to the duties or powers of existing offices is an exercise of the appointing power, then every new duty required or power conferred upon any State, county, or township officer, must be deemed the exercise, by the General Assembly, of the appointing power, and forbidden by the Constitution."

But it is said that the appointment of these trustees is not the exercise of a judicial function. Suppose this to be so; does it follow that no functions except such as are purely judicial, can be constitutionally annexed to the office of a judge? Can judges not be made conservators of the peace, and, as such, be required to discharge duties which are not of a judicial character? If no power of appointment to any office or position of public trust can be devolved upon a court or judge, it is certain that many of the statutes of this State are invalid. Quite a number of statutes have been referred to by counsel in

which such power of appointment is given to Probate Judges, Judges of the Court of Common Pleas, and Judges of the Superior Court. But is it clear that the selection and appointment of these trustees which the act requires to be made by the Judges of the Superior Court, and to be entered on the minutes of the court, is in no sense a judicial act? It is the act of a court, and the selection of the trustees, and the fixing of the amount of their bonds, require the exercise of judgment and discretion. Authorities are not wanting to show that such an act is properly judicial in its character.

Thus, where a statute of New York authorized a town to issue bonds to aid in the construction of a railroad, and made it the duty of the county judge to appoint, under his hand and seal, three commissioners, to carry into effect the purposes of the act, it was held by the Supreme Court of that State that the act of making such appointment was judicial.

It was said by the court: "The action sought from the county judge is judicial. It is conferred by the statute upon the office of county judge to be exercised under its seal. The duty requires the exercise of judgment and discretion in the selection of commissioners. The individual is in no way responsible for any act of those he may select, in the discharge of their duties. In no sense is the act of selecting commissioners ministerial. They do not act on the command of the county judge; he issues no process to them. If, after appointment, the persons designated accept and act, they do so under, and by virtue of, the statute, and not in virtue of the order designating them as commissioners." *Sweet vs. Hulbert*, 51 Barb. S. C. Rep. 315. Nor do we think that these

trustees are *officers* within the meaning of that clause of the Constitution which provides that "the General Assembly, in cases not provided for in this Constitution, shall fix the term of office, and the compensation of all officers."

This clause can not be regarded as comprehending more than such offices as may be created to aid in the permanent administration of the government. It can not include all the agencies which the General Assembly may authorize municipal and other corporations to employ for local and temporary purposes. The trustees have no connection with the government of the State, or of any of its subdivisions. They have nothing to do with the general protection and security of persons or property. Their sole duty is to procure and superintend the construction of a particular road, and to lease it, when constructed. When this shall have been done, so far as appears from the act, their functions end. And in the road, when constructed, the State will have no proprietary interest. All the railroads of the State, though owned and operated by private corporations, are in an important sense public improvements; yet the officers who manage them and superintend their pecuniary interests, are not public officers within the meaning of this constitutional provision. No one supposes that the compensation of such officers must be fixed by the Legislature.

It remains to consider, with reference to the general purpose and object of the act, whether there are in the Constitution special limitations on the general legislative power vested in the General Assembly, which prohibits the authorizing of a city to raise, by taxation of its citi-

zens, the means for constructing a railroad leading into such city, when such an improvement is deemed by a majority of the citizens to be essential to its interests.

It is claimed that the grant of such authority is in violation of article 8, section 6, of the Constitution, which reads as follows :

Art. VIII, Sec. 6. "The General Assembly shall never authorize any county, city, town, or township, by vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money or loan its credit to, or in aid of, any such company, corporation, or association."

It is proper to consider this section in connection with the sections which precede it in the same article, and with some provisions found in other articles which bear more or less directly upon the same and kindred subjects.

The first two sections of this article enumerate the purposes for which the State may contract debts, and the third section declares that, except the debts thus specified, "no debt whatever shall hereafter be created by, or on behalf of, the State." The fourth section declares that "the credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation whatever; nor shall the State ever hereafter become a joint owner or stockholder in any company or association, in this State, or elsewhere, formed for any purpose whatever." The fifth section forbids the assumption, by the State, of the debts of any county, city, town, or township, or of any corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war. In art. 12, sec. 6, it is declared "the State shall never

contract any debt for purposes of internal improvement." And art. 13, sec. 6, provides as follows: "The General Assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such power." In *Cass vs. Dillon*, 2 O. St. Rep. 613, 614, it was held, and we think properly, that the limitations imposed upon the State by the first three sections of art. 8, were not intended as limitations upon her political subdivisions—her counties and townships. And the clear implications of the fifth section are that counties, cities, towns, and townships may create debts to repel invasion, suppress insurrection, or defend the State in war; which the State may assume; and may also create debts for other purposes, which the State is forbidden to assume. By the fourth section, a limitation is imposed in respect to the State, similar to that prescribed in the sixth section, in regard to counties, cities, towns, and townships.

The State and her municipalities and subdivisions are clearly distinguished, and treated of separately. It is to the latter that the inhibitions of the sixth section relate. What are the extent and purport of those inhibitions? Its own language must furnish the answer to this question, if that language be plain and unambiguous. Of course, I do not mean that we are bound to adhere strictly to the letter, without regard to the evident meaning and spirit of the instrument.

The fundamental law of the State is to be construed in no such narrow and illiberal spirit. On the contrary it is to be construed according to its intention, where

that is clear; and that which clearly falls within the reason of the prohibition may be regarded as embodied in it. Still it is very clear that we have no power to amend the Constitution, under the color of construction, by interpolating provisions not suggested by the language of any part of it. We can not supply all omissions, which we may believe have arisen from inadvertence on the part of the constitutional convention. Recurring, then, to the language of this section, it is quite evident that it was not intended to prohibit the construction of railroads, nor indeed to prohibit any species of public improvements.

The section contains no direct reference to railroads, nor to any other special classes of improvements or enterprises. Its inhibitions are directed only against a particular manner or means by which, under the Constitution of 1802, many public improvements had been accomplished. And its language is sufficiently comprehensive to embrace every enterprise involving the expenditure of money, and the creation of pecuniary liabilities. Under the Constitution of 1802, numerous special acts of legislation had authorized counties, cities, towns and townships to become stockholders in private corporations, organized for the construction of railroads, to be owned and operated by such corporations. The stock thus subscribed by the local authorities was generally authorized to be paid for by the issue of bonds which were to be paid by taxes assessed upon the property of their constituent bodies. Many of these enterprises proved unprofitable and the stock became valueless. Some of them wholly failed.

Heavy taxation followed to meet and discharge the interest and principal of the bonds thus issued. Towns

and townships were induced to attempt repudiation of their contracts.

And as the records of this court abundantly show, the assessment and collection of the taxes, which the preservation of good faith required, had repeatedly to be enforced by mandamus. In many, if not all of these cases, it was alleged that the stock subscriptions sought to be enforced had been voted for and made under the influence of false and fraudulent representations made by interested officers and agents of the corporation to be aided by the subscription. At the time of the formation and adoption of the present Constitution these evils had begun to be seriously felt, and excited the gravest apprehensions of calamitous results. Under such circumstances this section was made a part of the State Constitution.

It may be well again to recur to its language: "The General Assembly shall never authorize any county, city, town, or township, by vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation or association whatever; or to raise money for, or loan its credit to or in aid of any such company, corporation or association."

The mischief which this section interdicts is a business partnership between a municipality or subdivision of the State, and individuals or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever. In no project originated by individuals, whether associated or otherwise, with a view to gain, are the municipal bodies named, permitted to participate in such manner as to incur pecuniary expense or liability. They may neither become stockholders, nor furnish money or credit for the

benefit of the parties interested therein—though joint stock companies corporations and associations only are named, we do not doubt that the reason of the prohibition would render it applicable to the case of a single individual. The evil would be the same whether the public suffered from the cupidity of a single person, or from that of several persons associated together.

As this alliance between public and private interests is clearly prohibited in respect to all enterprises of whatever kind, if we hold that these municipal bodies can not do on their own account, what they are forbidden to do on the joint account of themselves and private partners, it follows that they are powerless to make any improvement, however, necessary with their own means, and on their own sole account. We may be very sure that a purpose so unreasonable was never entertained by the framers of the Constitution.

Besides, if this section is to be construed so as to prohibit municipal corporations from making improvements on their own account, and with their own means, then the fourth section of this same article, which is quite similar in language, must be held to prohibit the making of any improvements by the State on her own account, and with her own means. This would not only be highly unreasonable, but would conflict with the clear implications of the section which prohibits the State from *contracting any debt* for purposes of internal improvement.

This implies that the State may make all such improvements as will not involve the creation of a debt. We find ourselves unable, therefore, upon any established rules of construction to find in this section the inhibition claimed by council to arise by implication.

It may be, and indeed, I think it very probable, that had the framers of the Constitution contemplated the possibility of the grant to a municipal corporation of such powers as the acts under consideration confer they would have interposed further limitations upon legislative discretion.

But omissions of such a grave character surely can not be supplied according to the conjectures of a court.

It is agreed, however, that the trustees of the contemplated railway are a corporation, and that the act in question violates the terms of this section, by authorizing the city to raise money for and loan its credit to this corporation, to enable it to construct a railroad.

We think it unnecessary to inquire whether the trustees provided for by the act are in any sense a corporation or not. For if they are an association or organization of any kind whatever, having a property interest in the road distinct from that of the city, then the objection is well taken. The inhibitions of this section are not directed against *names*.

But it is clear that these trustees are a mere agency through which the city is authorized to operate for her own sole benefit. Neither as individuals nor as a board have they any beneficial interest in the fund which they are to manage, or in the road which they are to build.

They are *in fact*, as well as *in name*, but *trustees*, and the sole *beneficiary* of the trust is the city of Cincinnati. They are authorized to act only in the name and on behalf of the city.

Looking, therefore, to the substance of things, this case can not be brought within the terms of the prohibition unless we are to regard the city itself as being one of the

corporations for which money is not to be raised, nor a loan of credit made.

We do not understand counsel as relying upon any other grounds of objection to the validity of this act than those which we have considered, and are of opinion that the judgment of the court below must be affirmed.

JUDGMENT OF THE SUPERIOR COURT AFFIRMED.

